

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK, LLC,

8 Debtor.

9 - - - - - x

10 United States Bankruptcy Court

11 One Bowling Green

12 New York, NY 10004

13

14 November 1, 2022

15 11:15 A.M.

16

17

18

19

20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KS

1 HEARING re Status Conference Using Zoom for Government RE:
2 Debtors Motion Seeking Entry of an Order (I) Permitting the
3 Sale of Stablecoin in the Ordinary Course and (II) Granting
4 Related Relief. (Doc# 832, 853, 855, 895, 901, 922, 925,
5 936, 954, 967, 970, 1043, 1058, 1076, 1085, 1086, 1186,
6 1188, 1228, 528)
7
8 Hearing Using Zoom for Government RE: Debtor's Motion for
9 Entry of an Order Authorizing the Debtors to Redact and File
10 Under Seal Certain Confidential Information Related to the
11 Debtors Key Employee Retention Plan. (Doc# 1020, 1202, 1231)
12
13 Hearing Using Zoom for Government RE: Debtor's Motion for
14 Entry of an Order (I) Approving the Debtors Key Employee
15 Retention Plan and (II) Granting Related Relief. (Doc## 1021
16 to 1023, 1187, 1202, 1207, 1231)
17
18 Hearing Using Zoom for Government RE: Motion Seeking a
19 Ruling of Full Title of Ownership of Funds With Respect to
20 Users Who Have Been Blocked Access By Debtor Prior to
21 Bankruptcy and to Request Disclosure From Debtor on the
22 Number and Amount of Suspended/Closed Accounts Which Funds
23 Still Kept by Debtor Filed by Kwok Mei Po. (ECF DOC. ## 877,
24 882, 1106, 1121) .
25

1 Hearing Using Zoom for Government RE: Motion To Consider All
2 USDC Investors And Account Holders of Celsius Network, LLC
3 As Secured Creditors Instead of Unsecured Creditors filed by
4 Nicole Barstow. (Doc #950, 1017, 1185, 1188, 1201, 1213)

5
6 Hearing Using Zoom for Government RE: Motion to Consider
7 Stablecoin Creditors as Secured Creditors. filed by Lucas
8 Holcomb. (Doc ## 965, 1017, 1185, 1188, 1213)

9
10 Hearing Using Zoom for Government RE: Motion to Consider
11 Tethergold (XAUT) Creditors as Secured Creditors filed by
12 Douglas Saker. (Doc ## 990, 1017, 1185, 1188, 1201, 1223).

13
14 Hearing Using Zoom for Government RE: Amended Motion to
15 Compel Insider Clawbacks by the Debtors, UCC. (Doc ## 1052,
16 1135, 1178, 1211, 1212, 1218)

17
18 Hearing Using Zoom for Government RE: Motion to Compel The
19 Debtors To Institute Significant Cost Cutting Measures filed
20 by Daniel Frishberg. (Doc # 1041, 1052, 1137, 1178, 1194,
21 1199, 1211, 1212, 1218, 1220)

22
23 Hearing Using Zoom for Government RE: Rule 2004 motion. (Doc
24 # 1053, 1189, 1219)

25

1 Hearing Using Zoom for Government RE: Responses filed by
2 Ignat Tuganov and Gregory Pesce to Notice of Presentment RE:
3 Examiner's Motion to Approve Work Plan. (Doc. # 1013, 1081,
4 1104, 1105, 1127, 1221, 1222, 1227, 1229 to 1231, 1237)

5
6 Hearing Using Zoom for Government RE: Examiner's Motion to
7 Confirm Examination Scope or Alternatively for Expansion of
8 the Scope of the Examination. (Doc# 1112, 1134, 1149, 1159,
9 1161, 1217, 1229, 1230, 1235, 1236, 1237)

10
11 Hearing Using Zoom for Government RE: Examiners Application
12 for Entry of an Order Authorizing the Retention and
13 Employment of Jenner & Block LLP as Attorneys for the
14 Examiner Effective as of September 29, 2022. (Doc# 958, 962)

15
16 Hearing Using Zoom for Government RE: Application to Employ
17 Huron Consulting Services LLC as Financial Advisor to the
18 Examiner, Effective as of October 10, 2022 filed by Vincent
19 Edward Lazar on behalf of Shoba Pillay. (Doc # 1070)

20

21

22

23

24

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 MCCARTER ENGLISH, LLP

4 Attorneys for Ad Hoc Committee of Borrowers

5 245 Park Avenue

6 New York, NY 10167

7

8 BY: DAVID J. ADLER

9

10 UNITED STATES DEPARTMENT OF JUSTICE

11 Attorneys for U.S. Trustee

12 201 Varick Street, Suite 1006, 10th Floor

13 New York, NY 10014

14

15 BY: MARK BRUH

16 SHARA CORNELL

17 BRIAN S. MASUMOTO

18

19 WHITE CASE LLP

20 Attorneys for Official Committee of Unsecured Creditors

21 1221 Avenue of the Americas

22 New York, NY 10020

23

24 BY: ANDREA AMULIC

25

1 WHITE & CASE LLP

2 Attorneys for the Official Committee of Unsecured

3 Creditors

4 555 South Flower Street, Suite 2700

5 Los Angeles, CA 90071

6
7 BY: AARON COLODNY

8 GREGORY F. PESCE

9 DAVID TURETSKY

10
11 TOGUT SEGAL SEGAL, LLP

12 Attorneys for Ad Hoc Group of Custodial Account Holders

13 One Penn Plaza, Suite 3335

14 New York, NY 10119

15
16 BY: BRYAN KOTLIAR

17
18 TROUTMAN PEPPER HAMILTON SANDERS, LLP

19 Attorneys for Ad Hoc Group of Withhold Account Holders

20 4000 Town Center, Suite 1800

21 Southfield, MI 48075

22
23 BY: DEBORAH KOVSKY-APAP

Page 7

1 KIRKLAND & ELLIS LLP

2 Attorneys for Debtor

3 300 North Salle

4 Chicago, IL 60654

5
6 BY: DAN LATONA

7 GABRIELA HENSLEY

8
9 KIRKLAND ELLIS LLP

10 Attorneys for Debtor

11 601 Lexington Avenue

12 New York, NY 10022

13
14 BY: TOMMY SCHEFFER

15
16 KIRKLAND ELLIS LLP

17 Attorneys for Debtor

18 1301 Pennsylvania Avenue

19 Washington, DC 20004

20
21 BY: GRACE BRIER

1 JENNER BLOCK

2 Attorneys for the Examiner

3 353 N. Clark Street

4 Chicago, IL 60654

5

6 BY: VINCENT LAZAR

7 SHOBA PILLAY

8

9 MILBANK

10 Attorney for The Series B Shareholders

11 1850 K St NW

12 Washington, DC 20006

13

14 BY: ANDREW LEBLANC

15

16 JONES DAY

17 Attorneys for CDP Instissements, Inc.

18 555 S Flower Street, 50th FL

19 Los Angeles, CA 90071

20

21 BY: JOSHUA MESTER

22

23

24

25

Page 9

1 TEXAS OFFICE OF ATTORNEY GENERAL

2 Attorneys for TX State Securities Board, Department of

3 Banking

4 P.O. Box 12548

5 Austin, TX 78711-2548

6

7 BY: LAYLA MILLIGAN

8

9 SULLIVAN CROMWELL LLP

10 Attorney for Alameda

11 125 Broad Street

12 New York, NY 10004

13

14 BY: BRIAN D. GLUECKSTEIN

15

16 VERMONT ATTORNEY GENERAL'S OFFICE

17 Attorney for VT Department of Financial Regulation

18 89 Main Street, Third Floor

19 Montpelier, VT 05620

20

21 BY: JENNIFER ROOD

22

23

24

25

1 VENABLE LLP

2 Attorneys for Ignat Tuganov

3 Rockefeller Center

4 1270 Avenue of the Americas

5 New York, NY 10020

6
7 BY: JEFFREY S. SABIN

8
9 ALSO APPEARING TELEPHONICALLY:

10 MEI PO KWOK - pro se creditor

11 CAMERON CREWS - pro se creditor

12 CHRIS FERRARO - Celsius Network LLC declarant

13 DANIEL ANATOLY FRISHBERG -- pro se creditor

14 JOSEPHINE GARTRELL - Celsius declarant

15 IMMANUEL HERRMANN -- pro se creditor

16 LUCAS J. HOLCOMB

17 VICTOR L. UBIERNA DE LAS HERAS -- pro se creditor

18 NICOLE BARSTOW -- pro se

19 JOHAN BRONGE -- pro se creditor

1

2

P R O C E E D I N G S

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CLERK: All right, good morning. Starting the recording for November 1st, 2022 at 10 a.m. Calling Celsius Network LLC, Case No. 22-10964. Start admitting participants. All right, good morning. The parties from Kirkland's that are going to be joining, if you want to test the microphone and unmute and just give me appearances, that would be helpful.

MR. SCHEFFER: You've got Tommy Scheffer of Kirkland and Ellis here in New York.

CLERK: Okay, thank you, Tommy. And Chicago, are you just listening or is someone going to be speaking from your office? Oh, she walked away. All right, that's fine. All right. Glad the New York office can speak. Do you know, Tommy, who from the New York office is going to appear on your line?

MR. SCHEFFER: It should be just me.

CLERK: Okay. Okay, so everyone else is separate. All right, thank you.

MR. SCHEFFER: Yeah, I'm muted. I even double checked when I saw --

THE COURT: All right, Jeffrey, maybe we could have you give your appearance if you're speaking today.

MR. SCHEFFER: Unmuted --

1 WOMAN 1: Yeah, we might need a mic.

2 CLERK: Go ahead. Sorry, I can't hear you.

3 MR. SABIN: How about now?

4 CLERK: Yes, I can, thank you.

5 MR. SABIN: So Jeffrey Sabin of Venable LLP on
6 behalf of creditor Ignat Tuganov in connection with Agenda
7 Item 11 on today's hearing.

8 CLERK: Thank you very much.

9 MR. SABIN: You're welcome. All right, Jennifer,
10 if you could give your appearance please.

11 MS. ROOD: Jennifer Rood, Vermont Department of
12 Financial Regulation.

13 THE COURT: Thank you very much. All right.
14 Victor, are you going to be speaking this morning? If you
15 could --

16 MR. UBIERNA DE LAS HERAS: Good morning, yes.

17 THE COURT: Yes. Go ahead. Go ahead. Sorry.
18 Yeah, sorry. Victor, if you could unmute again and just
19 give your appearance?

20 MR. UBIERNA DE LAS HERAS: Yes, I'm Victor
21 Ubierna. I'm a pro se creditor and I'll be speaking to you
22 this morning.

23 CLERK: Okay, thank you.

24 WOMAN 2: Yeah, you --

25 CLERK: Sorry. Sorry, please unmute again.

1 WOMAN 2: You've got the Kirkland Chicago line.

2 Are you able to hear us?

3 CLERK: Yes I am. Do you know who's going to be
4 speaking on this line or is this just a listen only line?

5 WOMAN 2: This is the speaking line and here
6 you'll have Chris Koenig, Dan Latona, Gabrielle Hensley, and
7 --

8 CLERK: Ross Kwasteniet?

9 WOMAN 2: Ross Kwasteniet as well.

10 CLERK: Okay, perfect. Those appearances are
11 noted. Thank you.

12 WOMAN 2: Perfect. And then we also have in the
13 waiting room a 312 number who will not be speaking, just
14 listening but if they could be admitted we'd appreciate it.

15 CLERK: Is that the 312-862-355 --

16 WOMAN 2: Yes, ma'am.

17 CLERK: Okay. Oh there's some -- seems to be some
18 background noise. I don't know, if it's okay I'll just mute
19 you for now unless you need to test your microphone because
20 I need to keep taking appearances.

21 WOMAN 2: We're good. Thank you so much.

22 CLERK: All right, thank you.

23 All right. For the parties that have been
24 admitted if anyone is going to be speaking on the record
25 this morning and you have not given your appearance yet,

1 please do so at this time again.

2 Again, any parties that have been admitted and
3 have not given their appearance yet and are speaking on the
4 record this morning, please unmute and give your appearance
5 for the record.

6 MS. GARTRELL: Hello, Your Honor. My name is
7 Josephine Gartrell and I am with Willis Towers Watson. I
8 will be presenting on the KERP this -- in this matter.

9 CLERK: Okay, thank you, Josephine.

10 MS. GARTRELL: Sure.

11 MR. CREWS: Hello there. Creditor Cameron Crews
12 may also be speaking regarding the KERP.

13 CLERK: Okay, thank you very much. All right,
14 Jonathan, please pause the recording for now.

15 (Recess)

16 CLERK: Nicole, if you could just give your
17 appearance for the record please?

18 MS. BARSTOW: Yes, hi. I'm Nicole Barstow, pro se
19 creditor.

20 CLERK: Thank you very much. Again, if any
21 parties have been admitted and have not given their
22 appearance and are speaking on the record, please unmute one
23 at a time and give your appearance please.

24 MR. PESCE: Good morning. It's Gregory Pesce,
25 White and Case, on behalf of the Committee joining.

1 CLERK: Thank you. And Aaron, I just am admitting
2 him as well. Greg, besides yourself and Aaron, are -- is
3 anyone else going to be joining and speaking on the record
4 this morning?

5 MR. PESCE: Yes, my colleagues David Turetsky, Sam
6 Hershey, and Andrea Amulic will join. They might speak as
7 well, depending on the circumstances.

8 CLERK: Okay. And Keith Wofford will not be
9 speaking; is that correct?

10 MR. PESCE: That's correct.

11 CLERK: Thank you. All right, has anyone else
12 joined from the Creditors Committee? Aaron, I don't -- I
13 think you haven't given your appearance yet, correct?

14 MR. COLODNY: That's right. Aaron Colodny from
15 White and Case on behalf of the Official Committee of
16 Unsecured Creditors.

17 CLERK: Thank you. And I admitted David as well.

18 MR. TURETSKY: Good morning, David Turetsky on
19 behalf of the Committee from White and Case.

20 CLERK: Thank you. All right for the parties that
21 have been admitted, if anyone is speaking on the record this
22 morning and has not given their appearance yet please unmute
23 one at a time and give your appearance. Deb, if you could
24 unmute and give your appearance please.

25 MS. KOVSKY-APAP: Good morning, Deanna. It's Deb

1 Kovsky, Troutman Pepper for the Ad Hoc Group of Withhold
2 Account Holders.

3 CLERK: Thank you. All right, just waiting for
4 some participants to join. All right, Shoba?

5 MS. PILLAY: Yes, good morning.

6 CLERK: Good morning.

7 MS. PILLAY: Shoba Pillay from Jenner and Block.
8 Thank you.

9 CLERK: Thank you. And you're appearing on behalf
10 of the examiner, correct?

11 MS. PILLAY: Yes. Well, I am the examiner, so
12 yes.

13 CLERK: I'm sorry. You are the examiner. Is Mr.
14 Lazar still appearing?

15 MS. PILLAY: He will be, yes.

16 CLERK: Okay, thank you.

17 MS. PILLAY: Thank you.

18 CLERK: All right, for the additional participants
19 that have joined, if you are speaking on the record and you
20 have not given your appearance yet, please un[mute one at a
21 time and give your appearance.

22 All right. For now, you can pause the recording.

23 (Recess)

24 CLERK: All right, for the parties that have
25 joined, if anyone is going to be speaking on the record and

1 has not given their appearance yet, please unmute one at a
2 time and give your appearance. Joshua Mester, are you going
3 to be speaking this morning?

4 MR. MESTER: Good morning. I do not expect to be
5 speaking today.

6 CLERK: Okay, thank you.

7 All right. You can pause the recording again.

8 (Recess)

9 CLERK: Yeah, so if you could just identify
10 yourself, please.

11 MS. BRIER: This is Grace Brier from Kirkland and
12 Ellis. I may be appearing today but I may not as well.

13 THE COURT: Okay, thank you very much.

14 MS. BRIER: Thank you.

15 CLERK: Brian Masumoto, are you --

16 MR. MASUMOTO: Good morning, Brian Masumoto for
17 the Office of the United States trustee.

18 CLERK: Thank you. Are Mark Bruh or Shara Cornell
19 going to be joining as well?

20 MR. MASUMOTO: Yes, I just got off the Teams with
21 them and they'll be logging on shortly.

22 CLERK: Okay. Thank you. Good morning, Shara.
23 If you could unmute and give your appearance please.

24 MS. CORNELL: Hi, it's Shara Cornell at the Office
25 of the United States Trustee. Deana, I may need to log in

1 and log out. I'm having some video problems.

2 CLERK: No problem.

3 MS. CORNELL: I'll let you know. Thank you.

4 CLERK: Okay. You're welcome. All right, Daniel
5 Frishberg, if you could unmute and give your appearance
6 please. All right. Again, Daniel Frishberg, if you could
7 unmute and give your appearance please?

8 MR. FRISHBERG: Yeah, Daniel Frishberg, pro se.
9 I'm here. Sorry.

10 CLERK: Thank you. Oh, not a problem. I know you
11 were still connecting to audio. It takes a few minutes
12 sometimes.

13 MR. FRISHBERG: Yeah. Sorry.

14 CLERK: No problem.

15 All right, Shara, do you want to just unmute to
16 check your microphone?

17 MS. CORNELL: Yeah, thank you very much. I
18 appreciate it, Deanna. Shara Cornell at the Office of the
19 United States Trustee.

20 CLERK: Okay, you're welcome, Shara. All right,
21 Kwok Mei Po, if you could unmute and give your appearance
22 please.

23 MS. KWOK: Yes, I would like to speak for my
24 motion today.

25 CLERK: Okay, thank you, and you're a creditor,

1 correct?

2 MS. KWOK: Yes, pro se creditor.

3 CLERK: Okay. Thank you very much.

4 MS. KWOK: Thank you very much.

5 CLERK: All right. Immanuel Herrmann, if you
6 could unmute and give your appearance, please.

7 MR. HERRMANN: Yes. Immanuel Herrmann, pro se
8 Celsius creditor.

9 CLERK: Thank you.

10 And I see some parties are joining. For the
11 parties that have just joined that have not given their
12 appearance, if you could unmute one at a time and give your
13 appearance for the record, if you have not done so.

14 Mark Bruh, if you could unmute and give your
15 appearance, please?

16 MR. BRUH: Good morning, Mark Bruh for the United
17 States Trustee. Thank you, Deanna.

18 CLERK: Thank you, Mark. All right. Vincent
19 Lazar -- oh there you are, Vincent. If you could just give
20 your appearance please.

21 MR. LAZAR: Thank you. Vincent Lazar, Jenner and
22 Block, on behalf of the examiner.

23 CLERK: Thank you.

24 All right, Andrew Leblanc, are you speaking this
25 morning?

1 MR. LEBLANC: Unlikely but possibly. Andrew
2 Leblanc of Milbank on behalf of certain Preferred B
3 Shareholders -- yeah, Preferred Shareholders.

4 THE COURT: Okay, thank you. And the other
5 parties that signed up, is anyone else from Milbank going to
6 be speaking on the record?

7 MR. LEBLANC: No. If anyone, it will be me.

8 CLERK: Okay, thank you.

9 MR. LEBLANC: I think Mr. Dunn will join, but he
10 won't be speaking.

11 CLERK: All right. Perfect, thank you.

12 All right. Dan Kaplan, are you going to be
13 speaking this morning? All right, for the parties that have
14 joined, if anyone -- speaking on the record and has not
15 given their appearance yet, please unmute one at a time and
16 give your appearance please.

17 Layla, are you -- Layla Milligan, are you speaking
18 this morning?

19 MS. MILLIGAN: Good morning. Can you hear me
20 okay?

21 CLERK: Yes, I can.

22 MS. MILLIGAN: Yes. Layla Milligan with the Texas
23 Attorney General's Office appearing on behalf of the Texas
24 State Securities Board and Department of Banking. I may
25 comment, depending on how the proceedings go, but I will go

1 ahead and enter my appearance.

2 CLERK: All right, thank you.

3 MS. MILLIGAN: Thank you.

4 CLERK: And for the parties that have joined that
5 have not given their appearance yet and are speaking on the
6 record this morning, if you have not given appearance please
7 unmute one at a time and give your appearance for the
8 record.

9 MS. AMULIC: Hi, can you hear me?

10 CLERK: Yes, Andrea.

11 MS. AMULIC: Hi, thanks. Andrea Amulic from White
12 and Case for the Committee.

13 CLERK: All right, thank you.

14 MS. AMULIC: Thank you.

15 CLERK: All right, Bryan Kotliar, are you going to
16 be speaking on the record this morning?

17 MR. KOTLIAR: Hi. Good morning. No, I don't plan
18 to speak, but I'm appearing for the Ad Hoc Group of
19 Custodial Account Holders.

20 CLERK: Okay, thank you.

21 MR. KOTLIAR: Thank you.

22 CLERK: All right. Parties that have been
23 admitted, if anyone is speaking on the record and has not
24 given their appearance yet, please unmute one at a time to
25 give your appearance.

1 All right, Brian Glueckstein, are you going to be
2 speaking this morning?

3 MR. GLUECKSTEIN: I do not anticipate speaking
4 this morning. Thank you.

5 CLERK: All right, thank you.

6 Again for the parties that have joined and have
7 not given their appearance yet, if you're speaking on the
8 record, please unmute one at a time and give your
9 appearance.

10 All right.

11 MR. LATONA: Hi, Deanna?

12 CLERK: Yes.

13 MR. LATONA: Our -- one of our declarants,
14 Christopher Ferraro, is still in the waiting room.

15 CLERK: All right. How do you spell the last
16 name?

17 MR. LATONA: F-E-R-R-A-R-O.

18 MAN 1: I have his phone number, too. It's a --
19 well, I don't want to give that out, actually.

20 CLERK: I do not see --

21 MAN 1: It's 718 phone number.

22 MR. LATONA: It's a 718 number.

23 CLERK: Okay. I'm looking. I don't see a 718
24 number. They might have dropped off for some reason.

25 MR. LATONA: Okay, thank you. We'll coordinate

1 with him.

2 CLERK: All right, thank you.

3 All right, for the parties that have joined, if
4 you have not given your appearance and you're speaking on
5 the record this morning please give your appearance one at a
6 time.

7 Can I get the name of the declarant again, in case
8 they join?

9 MR. LATONA: Yes, it's Christopher Ferraro, F-E-R-
10 R-A-R-O.

11 CLERK: Okay. Thank you.

12 MAN 1: He's in the waiting room waiting for host.

13 MR. LATONA: Yeah, he says he's in the waiting
14 room waiting for host.

15 CLERK: Okay. I don't see someone by that name in
16 the waiting room. Maybe it's another number that he's
17 joining with, because I don't see a 718 number.

18 MR. LATONA: Okay, thank you.

19 CLERK: Hi, is Chris Ferraro on the line?

20 MR. FERRARO: Hi, I'm here. I just joined.

21 CLERK: Okay. Yeah, if you could in the future
22 join with the first and last, full first and last name that
23 way we'll -- we can go by the list and admit you.

24 MR. FERRARO: Apologize. Sorry about that.

25 CLERK: No problem. All right. Are we waiting on

1 anyone else? We'll keep admitting as the -- as parties
2 join, but they join constantly throughout the hearing. So
3 if there's nothing holding up starting, I'll speak with the
4 judge. Anyone have any feedback on that?

5 MAN 2: We're ready to go.

6 MR. SCHEFFER: Debtors are ready to proceed, Your
7 Honor.

8 CLERK: Okay. All right. Please pause the
9 recording.

10 (Recess)

11 CLERK: All right, go ahead, please.

12 MR. ADLER: David Adler from McCarter and English
13 on behalf of the Borrowers. I apologize but for some reason
14 I could not get through on my other phone. It kept me in
15 the waiting room, so apologies for that.

16 CLERK: Okay. Thank you. All right, Lucas
17 Holcomb, are you going to be speaking on the record this
18 morning?

19 Yes. The parties that are speaking, I'm going to
20 mute you if you're not giving your appearance right now.
21 All right. Again, Lucas Holcomb, are you speaking on the
22 record this morning?

23 MR. HOLCOMB: No, I'm not.

24 CLERK: Okay, thank you. All right, we will be
25 starting in a few minutes. The judge just needs a few

1 minutes.

2 For the parties that have joined, if you're
3 speaking on the record this morning and you have not given
4 your appearance yet, please unmute one at a time and give
5 your appearance.

6 All right, let's pause the recording for now.

7 (Recess)

8 CLERK: I just have a few brief announcements. If
9 everyone could please state their name each time they speak
10 on the Court record. Also parties are strictly prohibited
11 from making any recording of Court proceedings, whether by
12 video, audio, screenshot, or otherwise. Violation of this
13 prohibition may result in the imposition of monetary and
14 nonmonetary sanctions. The clerk of the court maintains an
15 audio recording of all proceedings which constitutes the
16 official record.

17 Judge, would you like me to go through some of the
18 appearances or would you like to just get started?

19 THE COURT: We'll just get started.

20 CLERK: All right.

21 THE COURT: All right. Good morning, everyone.
22 This is Judge Glenn. We have a long agenda for today. We
23 will go through the agenda in the order which they're
24 included. The amended agenda was filed last night or this
25 morning and that's what I'm using. We will -- again, I will

1 again try to provide an opportunity for pro se parties to
2 speak -- that are speaking in relation to one of the motions
3 that the Court is hearing. Some of the motions on the
4 docket today have been filed by pro se parties and I
5 certainly will hear them in those matters.

6 At the bottom of your screen as in the past there
7 is a raise hand function. If you wish to be heard, please
8 raise your hand and I will try to recognize you in the order
9 in which hands are raised. Again, comments should be
10 directed to specific motions that will be heard by the Court
11 today.

12 First, let me get an update from the Debtors'
13 counsel as to where things stand.

14 MR. LATONA: Your Honor, diving right into the
15 agenda today, Dan Latona on behalf of the Debtors from
16 Kirkland and Ellis. Item No. 1 on the agenda is the
17 Debtors' KERP motion. This was filed at Docket No. 1021.

18 THE COURT: Mr. Latona, I would -- is there any
19 update that you or your colleagues would like to give before
20 we dive into the specific agenda for today?

21 MR. LATONA: Not today, Your Honor.

22 THE COURT: All right. Go ahead, Mr. Latona.

23 MR. LATONA: Again, Dan Latona from Kirkland and
24 Ellis on behalf of the Debtors. Diving right into the
25 agenda, Item No. 1 is the Debtors' KERP motion which was

1 filed at Docket No. 1021. In support of the KERP motion,
2 the Debtors filed the declarations of Christopher Ferraro,
3 the acting chief executive officer, chief restructuring
4 officer, and chief financial officer of the Debtors and
5 Josephine Gartrell, senior director of Willis Towers Watson,
6 the Debtors' compensation consultant.

7 Mr. Ferraro and Ms. Gartrell are each available
8 today to the extent any party wishes to cross examine them,
9 but to the extent that Your Honor has any questions, the
10 Debtors would offer each of those declarations into evidence
11 at this time.

12 THE COURT: You'll have to refer specifically by
13 ECF document -- docket number.

14 MR. LATONA: Yes. Mr. Ferraro's declaration was
15 filed at Docket 1022 and Ms. Gartrell's declaration was at
16 Docket 1023.

17 THE COURT: All right. Are there any objections
18 to the Court admitting in evidence the Ferraro and Gartrell
19 declarations, ECF 1022 and 1023? All right. Those
20 declarations are admitted as evidence for purposes of this
21 hearing.

22 MR. LATONA: Thank you, Your Honor. As the Court
23 is aware, the Debtors are pursuing a dual track process.

24 THE COURT: Before you --

25 MR. LATONA: One --

1 THE COURT: Before you begin, the Debtors also
2 filed a motion authorizing the Debtors to redact and file
3 under seal certain information relating to the KERP. I'll
4 refer to that as the KERP sealing motion, ECF Docket No.
5 1020. Please take that up before you take up the KERP
6 motion itself.

7 MR. LATONA: Of course, Your Honor. As Your
8 Honor, mentioned, the seal motion was filed at Docket No.
9 1020. The exhibit to the KERP motion contains commercially
10 sensitive information. The Debtors operate in a highly
11 competitive industry and the information filed under seal
12 would potentially allow competitors to poach the Debtors'
13 employees. That includes information such as the employee's
14 job title, reporting structure, KERP award amount, and job
15 title.

16 The employees are not voluntarily providing this
17 particular data and any data that the employees do publicly
18 volunteer themselves does not link this highly sensitive
19 information. Furthermore, disclosing this information would
20 negatively impact employee morale at a time when maintaining
21 the morale of the Debtors' employees is crucial to moving
22 these Debtors' Chapter 11 cases forward.

23 THE COURT: Mr. Latona, I have to tell you, I've
24 ruled on a lot of KERP and KEIP motions over the years.
25 I've never seen one where the proponent has essentially

1 proposed to seal everything. I'm looking. I have both the
2 redacted and unredacted copies, but the Exhibit B to the
3 motion, the KERP participant detail, has nothing, no
4 information whatsoever. The U.S. Trustee in its objection
5 to the KERP has also objected to the sealing motion. The
6 U.S. Trustee's objection is ECF Docket No. 1207. I've made
7 this point -- whoever speaking in the background, please put
8 your device on mute or you will be cut off. All right.

9 Mr. Latona, you provided no information to the
10 public about what it is you're seeking to do. You have not
11 provided -- first off, you haven't even provided the Court
12 with the names, even in the unredacted information. You
13 haven't provided the court with the names of the KERP
14 participants. You have titles, job description, supervisor,
15 name and title, hired, appointed by, salary, and KERP award.

16 It's completely blacked out on this exhibit.
17 That's completely unacceptable to me. So I'm going to
18 thwart your presentation because the KERP sealing motion is
19 denied.

20 Second, absent -- even with respect to the
21 unredacted information that you did provide, absent a
22 sufficient evidentiary basis for the Court to decide whether
23 the proposed KERP satisfies the high standards that must be
24 met before the Court approves a KERP, based on both the
25 redacted and unredacted (indiscernible) you provided in the

1 KERP motion, the KERP motion is denied without prejudice.

2 The Debtors propose to redact any meaningful
3 information that would allow parties in interest and the
4 public to evaluate whether the KERP motion should
5 (indiscernible). Even the unredacted information that has
6 been provided to the Court, Committee, and the U.S. Trustee
7 fails to provide sufficient information for the Court to
8 decide whether to approve the KERP.

9 I planned a written order today denying without
10 prejudice Debtors KERP motion and denying the sealing
11 motion. Let me just state briefly, I don't -- I will not
12 provide an extensive legal analysis of the requirements for
13 approval of a KERP in the order, but it's undisputed that
14 KERP payments to insiders must satisfy the exacting
15 requirements of Section 503(c)(1) of the Bankruptcy Code to
16 be approved and KERP payments to non-insiders is tested
17 against a more permissive standard of Section 503(c)(3), but
18 even then, the Debtor must establish a nexus between the
19 KERP and the results sought to be achieved.

20 Debtors haven't provided enough information to
21 determine who is an insider and even assuming that the
22 proposed recipients are not insiders, the Debtor has not
23 provided enough information for the Court to evaluate the
24 relationship between the proposed KERP payments and the
25 results sought to be achieved.

1 So the Committee filed a statement in support of
2 the KERP. That statement is at ECF Document 1187 and the
3 Committee emphasized that since the start of these cases,
4 the Debtor has begun to right size their workforce based on
5 their current business operations.

6 It goes through the specific -- some of the
7 specific merits of the changes in size and says that it
8 recognizes that many of the Debtors' remaining employees
9 possess important institutional knowledge requiring the
10 Debtors' business, taken on increased responsibilities as
11 part of the Chapter 11 case, and face uncertainty while
12 working for a company in Chapter 11.

13 I agree with all that, but your showing in support
14 of the motion, both redacted or unredacted, is not
15 sufficient to allow me to conclude that this KERP is proper.
16 So I recognize that under the facts and circumstances of
17 this case, the Debtor may be able to make the factual
18 showing required to obtain approval from the Court for the
19 KERP, but the record before the Court is not permitted to do
20 so. I'm cutting you off now because without a sufficient
21 public record, I'm not prepared to go forward and rule on
22 the motion.

23 So let me make a couple other points. With
24 respect to sealing, I'm not going to require that the public
25 record include the names of each of the proposed

1 participants. What I've done in the past in situations like
2 this is to require a code where each proposed participant is
3 given a code number. The Committee, the U.S. Trustee, and
4 here the examiner must be given the unredacted information
5 including the code. A greater factual showing is going to
6 be -- have to be required, I think first to show that none
7 of the participants are insiders.

8 There's some conclusory arguments that you've made
9 certainly in the unredacted information when I looked at
10 salary, none -- salaries for the participants. None of them
11 seems inordinately high, but I can't -- I also have
12 difficulty putting them in the context of the salary ranges
13 for the Debtors. I'm certainly -- and I'm sensitive to the
14 commercial aspects of disclosing the names, what the precise
15 salaries are.

16 I -- what I would ask you to do is to work with
17 the Committee and the U.S. Trustee and I would certainly
18 permit within reasonable limits if you showed salary ranges
19 for different categories of employees, not the precise
20 salary amounts for each individual and if you showed within
21 reasonable limits the proposed KERP awards with respect to
22 particular salary ranges.

23 So I'm not requiring that for employee one, you
24 show exactly what his or her salary is, an exact dollar
25 amount, and what the exact dollar amount of the award is.

1 But I want anyone looking at the record to be able to see
2 that the proposed awards are reasonable in relation to the
3 current salary ranges of different categories of people.
4 You're also going to have to provide evidentiary support in
5 declarations that show the job responsibilities before
6 bankruptcy, the job -- the expanded job responsibilities.

7 The Committee in its filing states in Paragraph 2
8 (indiscernible) likewise makes the point that, "The
9 Committee also recognize many of the Debtors' remaining
10 employees possess important institutional knowledge
11 regarding the Debtors' business, have taken on increased
12 responsibilities as part of these Chapter 11 cases, and face
13 uncertainty while working for a company in Chapter 11."
14 That's close quote. That's from Paragraph 2 of Committee's
15 response.

16 So there needs to be information that explain what
17 the increased responsibilities are, and certainly given that
18 the number in the Committee's filing is public, it indicates
19 that the Debtors had -- this is quote -- "The Debtors had
20 approximately 274, down from over 900 employees at the
21 beginning of 2022. The reduction in force has saved the
22 Debtors tens of millions of dollars annually in compensation
23 costs. See the Committee statement, Paragraph 1."

24 So there needs to be, you know, the record needs
25 to show the facts that -- on which I can base a finding. So

1 with respect to the objection of the U.S. Trustee, I guess
2 let me say -- let me back up a second. I do believe that
3 the Court should be able to approve a KERP in these cases if
4 the required factual showing's made.

5 If the U.S. Trustee wishes to take depositions of
6 any of the Debtors' employees or its advisors who formulated
7 the KERP, you can cooperate and make the witnesses available
8 promptly. I will only permit counsel for the Debtors or
9 your advisers if they wish to have their own -- the
10 Committee, and the U.S. Trustee to be present during the
11 depositions.

12 With respect to the transcripts of depositions, if
13 any are taken, I expect them to be filed on the docket. If
14 any party is going to move to seal some portion of the
15 transcript, the motion -- obviously I'm not going to have
16 unredacted copies filed until I have an opportunity to rule
17 on any motion to redact. Those motions do not need to be
18 brought on the omnibus hearing date.

19 I'll hear it expeditiously. I understand the need
20 for the Debtor to be able to -- if (indiscernible) organized
21 either on a standalone basis or we're going (indiscernible),
22 it's important that the Debtors have a workforce consistent
23 with its size and operations to be able to carry it forward
24 to a standalone plan or a sale. And if in fact employees'
25 responsibilities have expanded, that ought to be made clear.

1 So look, I'm telling you, I was shocked when I saw
2 the redactions. I've never seen anyone attempt to redact
3 everything. That's not going to happen in this case. I
4 thought that should have been clear after I ruled on, you
5 know, what was going to go into the schedules and then I get
6 something, everything is blacked out. You've got to be
7 joking.

8 Let me hear from the U.S. Trustee at this point.

9 MS. CORNELL: Thank you, Your Honor. Shara
10 Cornell at the Office of the United States Trustee. I'm not
11 sure how detailed you'd like me to go into right now.
12 Obviously, we agree with your ruling.

13 THE COURT: What do you want to do? I mean, I
14 thought -- you make the point, well, you can't tell who's an
15 insider.

16 MS. CORNELL: Yeah.

17 THE COURT: From the salary amounts, I have some
18 question about that, but --

19 MS. CORNELL: Yeah.

20 THE COURT: -- the evidentiary showing, they
21 haven't shown it. I mean, have you met and conferred? Have
22 you talked about either what you would require in additional
23 declarations? Are there depositions that you want to take?
24 Because I -- look, I do believe there's a basis for
25 approving a KERP in this case.

1 MS. CORNELL: Sure.

2 THE COURT: But it hasn't been made out. But I
3 don't --

4 MS. CORNELL: Sure.

5 THE COURT: -- want this to drag on for months.

6 MS. CORNELL: Sure, Your Honor. That makes sense.

7 THE COURT: What do you (indiscernible)?

8 MS. CORNELL: Well, for starters, Your Honor, I
9 think we need more historical information, both about the
10 historical salary structure of the Debtors in addition to
11 the use of the CEL token as part of a salary. The motion
12 and the reply are, you know, mute as to how either of those
13 functioned in the past. And we haven't received that
14 information from the Debtors to date. And I think we do
15 need quite a bit more information about that.

16 Whether or not we need depositions, I'm not sure
17 yet. We do have some questions about the Debtors' declarant
18 in this case. For example, it looks like the Gartrell
19 declaration of Willis Towers Watson, Willis Towers Watson is
20 not a retained professional in this case.

21 When they were employed or how they were employed
22 is not included in their declaration and it doesn't appear
23 as though they are in fact experts. But we know from the
24 monthly operating reports and bank statements that they've
25 received three post-petition payments that we're also

1 looking into at this point where they've received \$225,000
2 for their work on this KERP analysis.

3 So we may need to do further depositions with
4 respect to that and further investigate.

5 THE COURT: Further. Have you taken any
6 depositions so far?

7 MS. CORNELL: In this case, not yet, Your Honor.

8 THE COURT: Let's talk about the sealing. I --
9 look, I read your opposition.

10 MS. CORNELL: Sure.

11 THE COURT: It's like the opposition your office
12 has filed in almost every KEIP or KERP case I've ever had.
13 I'm trying to think whether -- I think I may have had one
14 when your office finally agreed that the KEIP or KERP was
15 okay. So, you know, it's a little bit of a broken record.

16 MS. CORNELL: Sure, sure.

17 THE COURT: But I think the points that you make
18 here, I think fundamentally are well taken. There's just
19 there's no evidentiary showing. And then look, you oppose
20 the sealing. I think this is a case of sealing everything
21 is clearly overbroad. Sealing something, I think, may be
22 appropriate.

23 Your office has agreed in some prior cases to use
24 the code where the names of specific employees are not
25 listed, but you -- did you try and reach an agreement with

1 the Debtors about what information you think needs to be
2 part of the public record and what can properly be sealed?

3 MS. CORNELL: Not yet, Your Honor, but we
4 certainly will after this hearing.

5 THE COURT: Please do it sooner rather than later.
6 This is important. Okay. The Debtors have shrunk their
7 workforce, which is appropriate. Okay. I'd like to hear
8 from the Debtors about what business they're actually
9 conducting now. That's not clear to me, but it's, you know,
10 as the workforce substantially reduces, if they're going to
11 reorganize either on a standalone or going concern basis,
12 they have to have a core workforce to carry on the tasks
13 that have to be done.

14 And I think in those circumstances a KERP, if it's
15 properly calibrated is appropriate. When I saw the
16 unredacted information and I see the salaries, you know,
17 nothing jumped out at me as clearly -- these are not huge
18 salary amounts. I don't know. The point you make about
19 where they compensated with CEL tokens, I don't -- that, I
20 don't have a grasp of. Okay. So I think your points are
21 valid on that. But what I want is I want you to meet and
22 confer with the Committee's counsel and the Debtors' counsel
23 promptly and see whether you can -- maybe you can come to an
24 agreement. Okay.

25 MS. CORNELL: Absolutely, Your Honor.

1 THE COURT: Anything you want -- I'm not hearing
2 this on the merits today because I just -- there's not
3 enough information. Is there anything else you want to say
4 at this point, Ms. Cornell?

5 MS. CORNELL: No thank you, Your Honor.

6 THE COURT: All right. Can I hear from
7 Committee's counsel? Go ahead.

8 MR. PESCE: Your Honor, my partner Mr. Colodny was
9 going to handle this, but I don't see him on the Zoom, so I
10 can briefly speak. Gregory Pesce, White and Case on behalf
11 of the Committee. You can hear me all right, Your Honor?

12 THE COURT: I can.

13 MR. PESCE: We're happy to confer with the Debtor
14 and the U.S. Trustee. Our overall goal in the cases is
15 transparency and preserving value. so your comments are
16 well taken. We can talk more about the substance of why we
17 were supporting this at that later hearing, but in the
18 meantime we will speak with the U.S. Trustee to make sure
19 this can go forward on a full evidentiary record which we
20 had, but it seems the rest of the public did not have, which
21 we can rectify.

22 THE COURT: I mean, when I read your statement, it
23 sounds like there were weeks of discussion that went on
24 between the Committee's professionals and the Debtors'
25 professionals in designing the KERP in a manner that was

1 acceptable to you. That's all well and good, but all I see
2 is the conclusions, that's what happened.

3 MR. PESCE: That's very well taken by us. We got
4 a lot of information but obviously more information is
5 needed for Your Honor and the public and we'll work with the
6 Debtor to minimize the redactions and make sure the full
7 record gets out there because I think as we said in our
8 pleading, this is a difficult issue and it was a
9 controversial one but it's one that we felt was appropriate
10 given the size and all of the work they did with us to get
11 our buy-in and cut costs and reduce the size of it over the
12 last couple of -- really it's over a month probably at this
13 point, but to get this ready for today and we'll work with
14 them to find a way to try to get that record in front of
15 you.

16 THE COURT: Okay. Let me ask you whether you have
17 any view about the sealing issue. I mean, look, I'm
18 sensitive to the commercial nature. I'm sensitive to any
19 physical risks that any of the employees might face. But on
20 the other hand, there's got to be a record on which not only
21 me but the public can see that this is why I did what I did.

22 MR. PESCE: Yeah, I appreciate that. We -- I
23 think we would be open to having some type of coding
24 mechanism so their names and titles aren't evident but the
25 amounts of compensation and other relevant information is.

1 From our experience, you know, we've gotten a lot of
2 information sent to us for your -- just for your benefit
3 from LinkedIn and job boards, you know, basically telling us
4 about who works at Celsius. So we do feel a little
5 concerned that if their names or their titles are out there,
6 it would be easy to sort of triangulate who they are.

7 That said, a coding mechanism for that information
8 coupled with disclosure of their salaries and a way to, you
9 know, make sure the underlying information underlying those
10 coded names or titles can get to the right people would be
11 something that we would support and can think about with the
12 Trustee and the Debtor.

13 THE COURT: I mean the last point I'd make, I
14 talked about salary ranges. I'm looking at the unredacted.
15 I'm not going to say what the salaries are, but you know, a
16 lot of them fall within bands. You could -- you know, if
17 the band was \$50,000 spread maybe, you know, just picking
18 that number out of the air -- so that I can understand
19 avoiding the situation one employee says, you're getting
20 that much more than I am. And --

21 MR. PESCE: Right.

22 THE COURT: At least if there's -- if the ranges
23 are reasonable and the KERP awards are reasonably banded as
24 well, I would be satisfied and permit the --

25 MR. PESCE: Okay.

1 THE COURT: -- a showing along those lines.

2 MR. PESCE: That makes sense to us, too. We can
3 think about what the appropriate bands are for the next
4 hearing.

5 THE COURT: Okay. Mr. Latona, is there anything -
6 - so I'm -- basically I'm denying without prejudice the KERP
7 motion and denying the sealing motion. Is there anything
8 you want to add? Look, let me just -- again, this does not
9 have to come on at an omnibus hearing. There needs to be
10 appropriate notice of it, but it can be hearing on shortened
11 notice that just focuses on the KERP. I can understand the
12 need, if it's going to be approved, to try and get it
13 approved reasonably promptly. So I'm amenable to that. Mr.
14 Latona, is there anything you want to add?

15 MR. LATONA: No, Your Honor. The Debtors will
16 confer with the United States Trustee and the Committee and
17 according to your Court schedule, will seek to file on an
18 expedited basis.

19 THE COURT: Okay, so that takes care of Items 1
20 and 2 on the agenda. (indiscernible) from there.

21 MR. LATONA: Thank you, Your Honor. I believe Mr.
22 Lazar from Jenner will handle the examiner motion up next
23 and I'm going to ceded the lectern to my partner Mr.
24 Kwasteniet.

25 THE COURT: Mr. Lazar.

1 MR. LAZAR: Good morning, Your Honor. Vincent
2 Lazar, Jenner and Block, on behalf of the examiner. Can you
3 hear me okay, Your Honor?

4 THE COURT: I can. I can.

5 MR. LAZAR: Great. Your Honor, I assume you've
6 had a chance to review the parties' submissions so I will
7 endeavor to be brief. First I wanted to advise the Court
8 that yesterday and this morning the examiner heard from a
9 number of the state regulators in response to the pleadings
10 that were filed over this weekend. The financial regulators
11 from the States of Wisconsin, Vermont, and Texas have
12 informed the examiner that they support an examination on
13 both the CEL token program and what public representations
14 were made to customers.

15 I believe that I saw appearances from
16 representatives of each of those agencies entered this
17 morning, and they can address the Court if you'd like them
18 to. We also understand from Ms. Cordry who represents a
19 group of state regulators -- and if I've got them right, I
20 think it's Alabama, Arkansas, California, Hawaii, Maine,
21 Missouri, New York, North Dakota, Oklahoma, and South
22 Carolina -- that those states also support a report on the
23 CEL token program and what public representations were made
24 to customers, and I believe that I saw Ms. Cordry made an
25 appearance as well.

1 Your Honor, turning the substance of the
2 examiner's requested relief --

3 THE COURT: Before you do that, just let me say.
4 There are two examiner motions that are on the docket today.
5 The examiner work plan motion which is the ECF Docket No.
6 1013 and the examiner motion to confirm scope which is ECF
7 Docket No. 1112. I believe that's the two motions that are
8 on the agenda for today. Go ahead, Mr. Lazar.

9 MR. LAZAR: Thank you, Your Honor.

10 THE COURT: -- treat those together. Okay.

11 MR. LAZAR: Yes. Thank you. So Your Honor, all
12 the customers filing responses on the docket supported the
13 examiner's motions. And the Debtors did not object to the
14 motions but reserved their rights concerning costs and
15 timing. So the Committee is the lone objector to portions
16 of the scope suggested by the examiner.

17 I do want to note that with respect to the scope
18 of the CEL token investigation, we heard from the Committee
19 yesterday that in its response the Committee was proposing a
20 scope that was somewhat different than what the examiner was
21 proposing. When we submitted our reply, we didn't
22 appreciate that there was a nuance in the Committee's
23 proposal with respect to that issue, and so I'll let the
24 Committee address it.

25 But it's the examiner's position that the scope

1 that was suggested in our motion is appropriate and
2 consistent with the concerns voiced by customers. So Your
3 Honor, I think everyone's in agreement that the Court asked
4 the examiner to look at pro se filings and no one appears to
5 be asserting that the examiner didn't accurately summarize
6 the fundamental concerns voiced by customers. And so the
7 Committee's objection really boils down to timing, cost, and
8 duplication of effort.

9 With respect to the timing issue, the examiner is
10 on track to deliver her interim report on schedule. We also
11 believe that the final report, including a report on the CEL
12 token program and representations made by the Debtors can be
13 completed on schedule or with a very short extension. Your
14 Honor, this of course assumes access to all the necessary
15 documents and witnesses.

16 As the Committee noted in its response, there have
17 been some issues getting documents as quickly as the
18 Committee or examiner would like, but we've had discussions
19 with the Debtors' counsel as recently as last night, and
20 we've received assurances that the Debtors are committed at
21 all levels to providing the examiner with all the materials
22 she will need as quickly As possible.

23 With respect to cost, the examiner fully
24 recognizes that this is an expensive case with a lot of
25 professional fees and she will do everything that she can to

1 complete her report within budget. The examiner also
2 intends to make most of the underlying material that will be
3 referenced in her final report available to all parties
4 following delivery of her report. We therefore hope that
5 the report will serve as a vehicle for ultimately reducing
6 the need for fact discovery and thus hopefully reduce the
7 overall cost of the case.

8 Finally, with respect to duplication, a key reason
9 that this matter is before the Court today is so that we can
10 in fact clarify precisely what work is expected to be
11 performed by the examiner, such that others won't be
12 duplicating that work. We've also been in regular
13 discussions with the Committee's professionals and to the
14 extent the Committee has performed some work that would be
15 helpful to the examiner's investigation, we would hope that
16 the examiner would be able to leverage any non-privileged
17 work already performed by any of the Committee's
18 professionals.

19 Unlike the Committee, which is a fiduciary for the
20 unsecured creditors and will be obligated to make arguments
21 advancing their positions, the examiner is a neutral party
22 and will not be advancing legal arguments on behalf of any
23 party, simply reporting facts. We therefore submit that the
24 examiner is the appropriate and best suited party to report
25 on the issues identified in the examiner's motions.

1 THE COURT: So I guess I'll hear from the
2 Committee next, but your last point, Mr. Lazar, the
3 Committee's fiduciary responsibility is to the unsecured
4 creditors, as you point out, and in some ways -- I may make
5 this comment again later -- a little curious that with
6 respect to determining whether or not any of the claims are
7 secured, it's odd coming from the Committee because to the
8 extent that any of the account holders are determined to be
9 secured creditors, it may mean that much less available to
10 unsecured creditors for recovery.

11 So it's a little bit of an odd argument to be
12 hearing -- a valid argument, but surprising from the
13 Unsecured Creditors Committee. It may well be that the
14 examiner's investigation discloses facts that may decrease
15 the value of the estate and the potential recovery by
16 unsecured creditors, so it may be that the examiner's report
17 will have the effect of not fully supporting what the
18 Committee might want to argue or reveal.

19 And as you say, I mean, I think the examiner has
20 got to play it straight and disclose the facts with evidence
21 to support it as, you know, whatever the examination
22 investigation reveals, but that's more of an issue. Let me
23 hear from the Committee next.

24 MR. PESCE: Thank you, Your Honor. Sorry, Gregory
25 Pesce, White and Case on behalf of the Committee. You can

1 hear me all right?

2 THE COURT: Yes, I can.

3 MR. PESCE: Let me just offer some context up
4 front here and apologies for being overly blunt here, but
5 these cases are taking too long to come to closure. They
6 cost too much. Account holders are demanding transparency
7 and, you know, despite extensive efforts by the Committee
8 and the Debtors, there's insufficient clarity exactly how
9 and when this case is going to end.

10 This was the case when the examiner motion was
11 filed. It's still the case today, although significant
12 progress is being made on a variety of fronts. But with
13 this context in mind, Your Honor will recall from the
14 pleadings we filed at the September 14 hearing, it was --
15 the Committee very reluctantly supported the appointment of
16 an examiner.

17 The cost of delay and -- the cost and the prospect
18 of delay were obviously very relevant. We also question
19 though, the need for an independent examiner here because
20 other than the preferred equity, the customers are the only
21 constituency in the case and the committee represents those
22 parties.

23 THE COURT: Well, you don't -- if the Court would
24 determine, for example, that some of the customers have
25 secured claims and that most of them did not, that would not

1 work to the advantage of the Committee.

2 MR. PESCE: That's true. We don't think that
3 there are secured claims, and even if there were, would see
4 --

5 THE COURT: It's funny. You didn't say that in
6 the paper that you filed. You filed a paper saying, well,
7 the Debtors right from day one said this is an important
8 issue. And so it was a little odd that -- accurate but odd
9 that it came from you.

10 MR. PESCE: Well, I guess we don't think that
11 there are secured creditors, at least of the type that
12 you're going to hear from later in the hearing today. Even
13 if there are, just math would imply there's a pretty big
14 deficiency claim which would be within our constituency in
15 any event. But you know, with this kind of context in mind,
16 when we spoke to the U.S. Trustee, we insisted on having an
17 order regarding scope that was tailored to the circumstances
18 of this case.

19 And in particular, we wanted to avoid duplicating
20 the work which was already underway when the motion was
21 filed and was pretty advanced at the time of the hearing and
22 today is even further advanced in this regard and at the
23 time it was filed, you know, there wasn't an agreement on
24 the cost of the examination, but we did tell the U.S.
25 Trustee with pretty clear specificity what we thought it was

1 appropriate to run this examination in light of what was
2 going on, the liquidity runway, and the exigencies of this
3 case.

4 So all of that context informed why we agreed to
5 the scope that we agreed to, you know, basically over nearly
6 two months ago at this point. And you know, with that
7 context in mind, let me just address a few things on the
8 examiner's scope and then the work plan that was the two
9 pleadings filed by the Jenner and Block firm.

10 First on the CEL token, as Mr. Lazar noted, we do
11 believe that aspects of the CEL token that were cited in the
12 examination scope expansion motion or already in the scope
13 of examination, and we do not have an objection to that.

14 There's really kind of two issues that we carved
15 out of the proposed scope expansion that we think are not
16 clarifying in nature and are an expansion that would
17 infringe upon a lot of work that's already been done.
18 First, they wanted to look at why other digital assets may
19 have been converted into CEL tokens and how those tokens are
20 marketed.

21 The why question is a pretty significant one
22 because CEL tokens were really a significant source of
23 compensation and return on investment for Mr. Mashinsky
24 01:28:50 and others. It was a pretty significant aspect of
25 how Celsius marketed its services to the public and by

1 looking at why digital assets may have been converted and
2 why CEL became an issue, that really is just sort of a back
3 door in our view to the rest of the investigation we're
4 already doing.

5 And like I said at the outset, we want
6 transparency. We're trying to be as transparent as
7 possible. Just last week we had, you know, another town
8 hall. We talk to people every day. We want transparency,
9 but we also just want to make sure this stays on track
10 because they don't have infinite funds and this type of
11 expansion going into the why this happened is a big one.

12 Second, there was sort of a valuation question
13 embedded there. So we had struck finding the resulting
14 value of CEL tokens as a result of the trading practices and
15 other things. Again, you know, we think that the scope as
16 prepared speaks to how tokens were stored prepetition and
17 post-petition and commingling. We always viewed that as
18 sort of like an enhanced coin reporting mandate.

19 We didn't view that as sort of a way to look at
20 why, big picture, the company was doing things with the
21 tokens and then how that resulted the value of -- that might
22 have affected the value of CEL, which is very part and
23 parcel of our own investigation.

24 On the customer communications, I'll just be very
25 clear on this because it seems like there's some confusion

1 in the examiner's response. Again, we're already doing this
2 work. We've looked at the -- all of the publicly available
3 Ask Me Anything videos. As a result of us speaking to
4 regulators and account holders and even our own members of
5 our Committee, it was made clear to us that there are
6 potentially important videos that were taken down at various
7 times prepetition or post-petition.

8 We've made demands on the Debtor to get those
9 videos, to the extent they are in their possession. We've
10 served discovery on Mr. Mashinsky, Mr. Leon, and others to
11 obtain those videos if they have them in their possession.
12 At the -- we've already reviewed the ones we have. Once we
13 get the rest, we can kind of include those in the fuller
14 picture of what we're doing. But again, those videos, you
15 know, are already out there to the extent that they weren't
16 taken down. We're going to incorporate those in our
17 investigation.

18 We don't think it's necessary to have a further
19 investigation into this matter, particularly because as
20 unfortunate and disturbing as some of the statements were in
21 those videos, given the context in which they were made, the
22 company is not engaged in crypto financial services today,
23 so we don't think there's a risk that people are going to
24 continue following the advice of Mr. Mashinsky or others
25 that appeared there.

1 So we don't think the customer communication
2 should be there. And then -- yes, Your Honor. Apologies.

3 THE COURT: I will hear from Ms. Cordry or the
4 other regulators, but aren't their interests different than
5 yours? I mean, you're --

6 MR. PESCE: Yeah.

7 THE COURT: You focused on, essentially what are
8 they telling customers now, if there are any customers
9 versus what happened in the past. But the regulators who
10 have been investigating for a considerable period of time,
11 their interest is retrospective as well as prospective; is
12 that a fair statement?

13 MR. PESCE: Yeah, great -- sorry, I heard an echo
14 there. It's great you raise the regulators. So the
15 regulators do have a different mission and priority and
16 different client base than we do. When we negotiated the
17 scope of order, it was the very issue you're flagging here
18 that, as you might recall at the time, the examiner motion
19 was pending, a lot of regulators weighed in to say that it
20 should cover potential state law, regulatory violations, or
21 criminal violations, or other things.

22 The regulators might be drawing on the same pool
23 of facts that we are to make our causes of action or our
24 investigation. Those causes of action though, if they
25 exist, are going to inure to the benefit of the account

1 holders and the unsecured creditors. Those same facts, if
2 they're utilized by the regulators or prosecutors or other
3 government interests are going to inure to the treasuries of
4 the various states or the federal government or whoever is
5 pursuing those claims. They're not going to go to the
6 constituency that's paying for it. So it's really
7 inappropriate in our view to have them subsidizing that
8 work.

9 THE COURT: If the state regulators conclude for
10 now at least we're happy to allow the examiner to pursue
11 this investigation, if she can't, the Debtor is going to
12 wind up with subpoenas from 34 or more or 50 state
13 regulators, the SEC, and those investigations and
14 proceedings probably are not stayed. And the cost to the
15 estate will be substantially higher than if the examination
16 for now at least is conducted by the examiner because your
17 constituency's interests, you've acknowledged, differs from
18 that of the regulators. That's the dilemma.

19 Isn't your constituency better off if it's the
20 examiner for now -- of course, doesn't prevent the state
21 regulators or the SEC from -- or the U.S. Attorney from
22 launching whatever it's going to do, but aren't you better
23 off if it's focused through the examiner rather than through
24 every regulator known to the face of the earth?

25 MR. PESCE: That's a great question. You know,

1 look, at the end of the day, if the examiner is charged with
2 this, it's still my constituency that's going to be paying
3 for it because it's going to be administrative expenses paid
4 by the estate. But I think it's also just a bit of a --
5 it's a bit of a solution in search of a problem because I,
6 if not every day, at least several times a week we're
7 speaking with state and federal regulators to hear what they
8 are seeing and to, you know, get their perspective on the
9 case.

10 As a result of that, we've been able to sort of
11 narrow and help the Debtor resolve objections to the bidding
12 procedures and other things. So I think this is already
13 sort of playing out well with the Committee being in the
14 middle of it because, we're kind of appropriately
15 coordinating where there's interests that coincide. But you
16 know, I don't think we need to vest the examiner with some
17 sort of mandate to do that which is already happening.

18 And we just candidly think the Committee is better
19 positioned to sort of weigh that and push back because we
20 are both, you know, inquisitor and we're also going to be
21 helping implement whatever transaction is here and getting
22 these different constituencies that might be affected by the
23 regulators' activities on board with that ultimate
24 transaction.

25 THE COURT: All right. Let me hear from --

1 MR. PESCE: I could just make one, just final
2 point just to -- because I think it is important here
3 because we've heard a lot about it. We are not trying and
4 don't intend to keep our -- the findings of our
5 investigation including involving CEL customer
6 communications, et cetera confidential. We expect that they
7 will become part of the Court record.

8 You know, we don't have a deadline to produce a
9 report, but we can see a lot of situations in the near
10 future where we put them in pleadings and at a minimum, we
11 would expect that the disclosure statement to go out to say
12 nothing of having our support for going out would need to
13 have a pretty exhaustive summation of what we have found on
14 different topics. So we don't think that there's
15 necessarily going to be secrecy here. We'll work to make it
16 as public and transparent as we can. So I appreciate Your
17 Honor's time and can do any other questions. Thank you.

18 THE COURT: Thank you, Mr. Pesce. Do any of the
19 attorneys for any of the state regulators want to be heard?

20 MS. MILLIGAN: Your Honor, if I may, this is Layla
21 Milligan with the Texas Attorney General's office appearing
22 on behalf of the Texas State Securities Board and the Texas
23 Department of Banking. Can you hear me okay?

24 THE COURT: I can. Nice to see you again. Go
25 ahead.

1 MS. MILLIGAN: Thank you. Good to see you, Your
2 Honor. I do want to just clarify a couple of things. One,
3 I do agree with Mr. Pesce that we have had active
4 communications between the state regulator body and the
5 Committee as well as the examiner and the states do have an
6 interest in understanding what happened with the Debtor
7 prepetition, what is happening now, how -- and we appreciate
8 the work that the Committee is doing.

9 However in our view, the more information that's
10 publicly available in this case, especially in light of the
11 very significant activities and involvement of pro se
12 creditors and the charge of this Court to the examiner to
13 read all of those pleadings and determine if her examination
14 should be expanded, in light of that, the expansion of the
15 scope of the examiner's report is appropriate.

16 This is a unique bankruptcy case, one where there
17 are a lot of different constituencies. However, I do take
18 exception to the assertion whether implied or direct that
19 the state's interest is in the state's coffers. The state's
20 interests are that the business moving forward is done
21 regulatorily compliant and that these consumers and
22 investors are made right and that they continue to be made
23 right and the company complies in the future as well as an
24 investigation of the past.

25 And so to that end -- forgive the colloquialism, I

1 guess, or the informality of this, but sometimes sunlight is
2 the best disinfectant and in this case more information
3 provided by a non -- I guess, by a party that is not subject
4 to a constituency we think would be helpful to everyone.
5 And as I said, I appreciate -- and we appreciate the work
6 the Committee is doing. If they intend to issue a report of
7 some sort that is providing information and not necessarily
8 in support of a plan or in support of an assertion or
9 movement, a pleading, that would be fantastic, but I think
10 that's what the examiner is charged with doing and I think
11 that our position is and the position of many of the states
12 is that her request is appropriate in this case.

13 THE COURT: Thank you, Ms. Milligan. Ms. Cordry,
14 be --

15 MS. MILLIGAN: Thank you.

16 THE COURT: -- heard?

17 MS. CORDRY: Yes, Your Honor. I agree with pretty
18 much everything that Ms. Milligan just said. I would just
19 add to this that the Committee has a lot of things on their
20 plate right now. The examiner has a more focused motion.
21 Everybody in this case has bits and pieces of information on
22 a lot of these topics that she's proposing to discuss.

23 I think it's a single neutral centralized forum,
24 where that information can be gathered and brought together.
25 I don't think there's any need to assume that there would be

1 duplication. What she does will come out and will be a
2 report that the Committee can then use at some later point,
3 if it's bringing litigation and so forth.

4 But I don't think anybody expects it to get to
5 that stage before the time that her report is due. And she
6 does have a deadline, so there is a very focused need to
7 deal with those issues. And I think she can gather the
8 information from the estates, from the Creditor's Committee,
9 what it has gathered today from the Debtor, from all those
10 other parties in the case, where there -- somebody -- ad hoc
11 kind of committees and constituencies popping up.

12 We do agree that I think it just seems like in
13 this case, and it's an appropriate scope for her work to be
14 done, and we would support that. Thank you.

15 THE COURT: Thank you, Ms. Cordry. Do any of the
16 other estate regulators wish to be heard?

17 MS. ROOD: Just briefly, Your Honor, Jennifer Rood
18 for the Department of Financial Regulation. We also support
19 the Examiner's Motion to extend or clarify the scope. We do
20 think her role is very distinct from the Committee, and the
21 Committee is certainly doing good work here, but they have a
22 different constituency.

23 We likewise take exception to the comment about
24 our state treasuries. We are freely focused on the interest
25 of retail investors, the folks that have the entire you

1 know, education or retirement fund you know, taken up by
2 Celsius. And certainly to the extent there was a market
3 manipulation or fraudulent representations pre-petition, we
4 want that looked into carefully.

5 And you know, if we pursue our own regulatory
6 actions against Celsius, you know, there are lots of ways to
7 resolve those and they don't always involve fine store
8 treasuries. There are lots of creative ways to structure
9 those outcomes.

10 So to this -- I guess finally, to the extent that
11 there might be any duplication on some of these points, we
12 are pretty confident the Examiner and the Committee can work
13 that out and end up with a result that's not, you know, a
14 lot of duplication.

15 I think the Court's point about the 40 states
16 subpoena-ing is well-taken. It's, as a matter of resources,
17 both of the bankruptcy estate and of the states, it's much
18 more efficient to have one neutral party, you know, looking
19 into some of these issues.

20 THE COURT: All right. Do any -- I see Mr. Cruz
21 with his hand raised, but before we get to you, are there
22 any other state regulators who wish to be heard?

23 MR. MORRIS: Just briefly, Your Honor, if I could?
24 This is Michael Morris on behalf of the State of Wisconsin.
25 Just very briefly, I would just -- just want to state on the

1 record that Wisconsin joins the other states in their
2 remarks and supports the Examiner's motions.

3 THE COURT: Thank you very much. All right, Mr.
4 Crews?

5 MR. CREWS: Yes. I agree with the state
6 regulators. This is -- there's a lot that needs to be
7 looked into here. In particular, there was a -- earlier
8 before the Court, it was argued that Kirkland & Ellis did
9 not have conflicts of interest representing both Voyager and
10 Celsius simultaneously.

11 What they did not disclose was that Voyager is a
12 Celsius customer, who withdrew \$5.6 million worth of crypto
13 in late May. They also withdrew \$100 million worth of
14 stable coin on March 9th, which could be subject to
15 preference claims.

16 And these are matters which existing legal
17 representation, including White & Case, including Kirkland &
18 Ellis conveniently overlooked. So Kirkland & Ellis is
19 simultaneously representing Voyager, which managed to file
20 for bankruptcy before Celsius. They're going to exit
21 bankruptcy before Celsius, get out of their bankruptcy
22 potentially before Celsius, with their \$100 million plus
23 crypto that they've extracted.

24 And then that would make it much more difficult to
25 deal with these preference claims. And these are matters

1 that should be substantiated by the Examiner, which existing
2 legal representation has not sufficiently dealt with. Thank
3 you.

4 THE COURT: Thank you, Mr. Crews. Mr. Herrmann,
5 you were next.

6 MR. HERRMANN: Oh. Thank you, Your Honor. I'm
7 having a video issue, so maybe -- oh here we go. So I'll
8 aim to not go too long here. First, I just want to say, I
9 agree with the state regulators, and I do fully join in the
10 reply of the Examiner, DR1236.

11 And second, I agree with you, Your Honor, that I
12 believe it's cheaper and more efficient to deal with
13 regulators through the Examiner than to have 34 state
14 regulators going through the UCC and the Debtor, and then to
15 have them fighting back and forth, when we need
16 transparency.

17 So that's a couple just points that I wanted to
18 make. And then, on the examiner work plan more broadly, I
19 just wanted to bring up two additional issues. The first is
20 that -- is actually related to substantive consolidation in
21 light of the filings of the Preferred Equity Committee and
22 what they're trying to do with their recent filings.

23 I'll note that in a filing DR779, filed on
24 September 12th, I requested an examination concerning
25 whether Celsius' books and records reflected that they acted

1 as a unitary company. Now that the preferred shareholders
2 have asked to resolve which entity its customers have claims
3 against, it seems potentially important to address, or at
4 least I would like to hear from other parties how they plan
5 to address this issue.

6 I'm not sure how it's possible to resolve these
7 issues quickly without looking into substantive
8 consolidation and whether Celsius acted as a unit -- unitary
9 company, if the preferred shareholders are pushing so hard.
10 And it'll ultimately be up to the Court to determine whether
11 Celsius' entities should be substantively consolidated.

12 But I do believe the Examiner could help build a
13 factual record. And while I could file a new motion, you
14 know, I'll already note that that motion's out there. And
15 so, you know, I may or may not need to file it, but you
16 know, I guess we can see how that goes with the Preferred
17 Equity Committee.

18 And then, the second issue really that I wanted to
19 raise, which I probably will be filing a motion on shortly
20 is whether pre-petition and post-petition misconduct, mainly
21 based on statements, but also the acts of the Debtors rises
22 to the level that the appointment of a Chapter 11 Trustee is
23 warranted.

24 I have not yet explicitly filed anything asking
25 the examiner to look into whether to appoint a Chapter 11

1 Trustee, but I will note that I and other pro se filers have
2 requested it be looked into in general. We've talked about
3 filing our own motions.

4 You know, after thinking about this, talking with
5 some experts and others, I think I'm inclined to say I
6 probably will file a motion asking you know, an examination
7 -- for an examination of those issues, rather than filing my
8 own motion for a Trustee or something like that.

9 So those were just a couple of things I wanted to
10 note. And then, the last thing, really briefly, on the
11 Ponzi issue, I filed a long responsive pleading on that. I
12 have some big concerns about something so volatile being
13 labeled a Ponzi and what the practical implications of that
14 are, yet it does seem like the Debtor has admitted to paying
15 out one person's earnings with another person's principle.

16 And it seems like regardless of whether it meets
17 the traditional definition of a Ponzi, and whatever the
18 Court decides on that, it seems like we do need to have a
19 public understanding of how long that went on for, which is
20 also related to clawbacks in addition to Ponzi questions.
21 So it's -- it just seems like an important issue for this
22 case.

23 And so, I believe the Examiner's proposed
24 examination is articulated in her filings. Did the Debtors
25 use deposits by later customers to repay amounts due to

1 earlier customers? And if this occurred, what was the
2 extent of the practice? When did it start? And for how
3 long did it occur is -- probably strikes the right balance.
4 Thank you.

5 THE COURT: Thank you, Mr. Herrmann. Mr.
6 Frishberg next.

7 MR. FRISHBERG: Thank you, Your Honor. I'll try
8 to keep this pretty brief. I do concur with what everyone
9 else said, such as Mr. Herrmann and Mr. Crews. I do believe
10 that the Examiner should be investigating this stuff. I'm
11 not sure if it should be -- I don't think -- I don't agree
12 with the UCC statement that they shouldn't investigate this.

13 I think it's much faster if they do investigate
14 it, instead of getting subpoenaed by like, 50 different
15 regulators. I think they -- the Debtors have been able to
16 investigate themselves for far, far too long, and it's quite
17 ridiculous, honestly.

18 I think the (indiscernible) should also, in
19 addition to everything that she stated it should be expanded
20 to investigate clawbacks, since the UCC has a conflict,
21 since we're the target of the clawbacks potentially is
22 Tether, which is a current client of White & Case.

23 I think the -- I agree with Mr. Herrmann, that the
24 Examiner scope should see if it's -- should be -- to
25 determine if it is a Ponzi scheme, whether it's -- whether

1 Celsius was a Ponzi scheme in the traditional definition or
2 in a non-traditional definition, and if a Ponzi declaration
3 would benefit the depositor/Creditors.

4 And it should also expand it to see what claims
5 the estate has against entities such as FTX, and if they
6 have claims against various lawyers or financial advisors
7 potentially, who -- like whoever wrote the contract, the
8 original one, there's -- it could -- they could have claims
9 against them. Thank you.

10 THE COURT: Thank you. Mr. Sabin?

11 MR. SABIN: Good morning, Your Honor. A pleasure
12 to be back in front of you. Jeff Sabin of --

13 THE COURT: One of these days we'll get everybody
14 in the courtroom. (indiscernible) --

15 MR. SABIN: We hope that will be soon, Your Honor.
16 We hope that will be soon. I'm from Venable. We are on
17 behalf of Creditor Ignat Tuganov, who is an undisputed
18 Creditor as an earned rewards customer. And I'm assuming
19 you read all of our papers. I'm going to get right to the
20 heart of it, okay?

21 We requested further to what was contemplated and
22 permitted under Docket Number 820 on September 14th, which
23 was your order appointing the Examiner and defining the
24 initial scope.

25 And we filed at Docket 1104 on October 18th, not

1 only our response to the work plan, but also our motion to
2 clarify our expand, the Examiner scope to include, and I'm
3 going to be specific here, whether the Debtors engaged in a
4 Ponzi scheme, if so, beginning when, and what were the
5 consequences thereof, and most importantly consistent with
6 the theme of transparency, sunlight, etc., requesting the
7 Examiner and its work plan to otherwise expand to include
8 this, especially since some of the areas of scope as we read
9 it are relevant to the factual finding.

10 And that publicly, the Examiner include it in
11 their report to be filed December 10th. I will say now on
12 the record that as a result of yesterday's filing in
13 response to our pleadings by the Examiner, Docket Number
14 1236, in particular, Paragraph 12, it makes clear the
15 Examiner's willingness to investigate Ponzi issues factually
16 but does not want to include in its report an articulation
17 of the legal conclusion of facts it reported on.

18 That is acceptable to us, no ifs, ands or buts.
19 What's not acceptable is the response of the Committee and
20 the Debtors. And those responses filed on yesterday by the
21 Committee at Docket Number 1237 and by the Debtor at Docket
22 1230 effectively say, as you read it, we should do, says the
23 Committee, the Ponzi investigation, not the Examiner. And
24 the Debtor's response is effectively supporting the
25 Committee's response.

1 THE COURT: Why shouldn't the Committee
2 (indiscernible)?

3 MR. SABIN: Because there's no obligation to do
4 it. There's no obligation as to when to do it. There's no
5 obligation to report on it. And so, that's the essence of
6 the most important points set forth in Paragraph 5 of our
7 pleadings.

8 And from our perspective, it is critical that the
9 facts be found, that the facts be reported, that they be
10 reported if at all possible as part of the Examiner's
11 December 10th report.

12 THE COURT: The Examiner's got an awful lot on her
13 plate for December 10th.

14 MR. SABIN: Understood. But also, as you know
15 well, having written 11 years ago on this very issue, that
16 many things that she's already looking at can simply be
17 looked at again with a little wider scope, or a little more
18 focused scope as to the facts that relate to Ponzi.

19 And so, to us, if that were to happen, and based
20 upon an experience that I lived through not too long ago in
21 the Woodbridge cases, it's not asking for the consequences,
22 it's not asking for a determination that this case is a
23 Ponzi, etc., it's otherwise saying to all the Creditors,
24 whatever they think of themselves, their treatment could be
25 affected by such a determination.

1 In addition, there's nothing that otherwise would
2 stop any of the regulators, state or federal from doing and
3 continuing to do their work, and from possibly, okay,
4 deciding that they need to indict that would -- may or may
5 not be relevant to a Ponzi.

6 And so, from our perspective in that history we
7 lived through in the Woodbridge case, I think a report, and
8 quite frankly, we're neutral. If the Committee wants to do
9 it and be obligated to do it in a timely fashion and be
10 obligated to publicly report, we're neutral, whether it's
11 the Committee or whether it's the Examiner.

12 It is do the homework, do the public
13 (indiscernible) so that hopefully, the Creditor
14 constituency, the equity constituency, otherwise can assess
15 with their own lawyers the consequences of the fact finding
16 and maybe it otherwise precipitates a mediation sooner
17 rather than later as opposed to proliferation of litigation
18 in these cases.

19 We have no desire to slow down the case. We have
20 no desire to interfere with sale. We have every desire to
21 say that this is an important issue to get investigated.
22 Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Sabin. Mr.
24 (indiscernible), before I'll recognize you, I want to see
25 whether there's anyone else who's not been heard yet who

1 wishes to be heard yet.

2 MAN: Good morning, Your Honor --

3 MR. CORNELL: Your Honor, this is Shara Cornell
4 with the Office of the United States Trustee. How are --
5 speaking again. I just wanted to say very briefly that we
6 agree with the requested scope of the Examiner.

7 THE COURT: Does anybody else who has not been
8 heard yet wish to be heard now?

9 MR. KWASTENIET: Good morning, Your Honor. It's
10 Ross Kwasteniet from Kirkland & Ellis on behalf of the
11 Debtors. We filed a statement, I believe due to the ECF
12 being down over the weekend, it was docketed yesterday.

13 In any event, we have acknowledged from day one in
14 these cases that there are important issues here that need
15 to be investigated so we're not saying that there are things
16 that really shouldn't be looked into. And in fact, Your
17 Honor, to one of your questions earlier in the case, you
18 know, what are the Debtors up to right now?

19 We're happy to provide you more information. One
20 of the key things the Debtors have been focused on, it may
21 not come as a surprise, but is the provision of information.
22 It's sitting for interviews, it's producing documents, it's
23 making sure that we maintain the key people with historical
24 knowledge, not necessarily to run active business
25 operations, but people who were involved in business

1 operations that were run historically in making sure that we
2 maintain the people who can sit down, as many of them have,
3 with the Committee, with the Examiner, and provide
4 interviews and provide information and facilitate the
5 different parties who want to kind of get to the bottom of
6 what happened historically, and then make sense out of, you
7 know, what a go forward plan that's regulatory compliant
8 might look like.

9 Those are among, of course maintaining crypto
10 security, you know, safeguarding the assets. There are many
11 people whose -- you know, that is their day job, guarding
12 against hacks and the like. But certainly providing
13 information and helping the parties who have legitimate
14 goals of getting to the bottom of things, that's one of our
15 main objectives.

16 THE COURT: (indiscernible) you just triggered a
17 thought, and I didn't make a note about it before.
18 (indiscernible) a proposed stipulation regarding security
19 issues of crypto securities. And I don't believe I approved
20 that stipulation yet. I want to see whether anybody else,
21 and particularly whether the US Trustee has a position on
22 it.

23 It looked fine to me, but there were not, you
24 know, I didn't see objections to it, and I do -- it is an
25 important issue. It was an important issue from day one.

1 It remains an important issue. Mr. Kwasteniet, I don't know
2 when -- when is our next omnibus hearing?

3 MR. KWASTENIET: I believe the next omnibus
4 hearing is December 5th, Your Honor. We do have a hearing
5 on November 15 that is starting to take the look of an
6 omnibus hearing. There is a few things that have been
7 bolted onto it, and but so, we have a November 15 hearing,
8 and then a December 5th hearing, Your Honor.

9 THE COURT: For the November 15th hearing, I would
10 like to hear you or one of your colleagues to provide a
11 description of what if any current business are the Debtors
12 actually engaged in.

13 MR. KWASTENIET: Happy to do, Your Honor.

14 THE COURT: You don't need to do it.

15 MR. KWASTENIET: Absolutely.

16 THE COURT: Why don't you plan on -- at the start
17 of the next hearing, I'll ask for an update on the Debtor.
18 That's what I would like to hear, is what, if anything the
19 Debtor is actually doing other than responding to
20 investigation, important -- don't -- I don't want to mistake
21 that.

22 MR. KWASTENIET: Yes.

23 THE COURT: It's a crucial role here. But that's
24 important to me, okay?

25 MR. KWASTENIET: Thank you, Your Honor. We will

1 do that. And we would appreciate Your Honor entering the
2 securities stipulation order at your convenience. That is -
3 - we did work very hard on that.

4 THE COURT: Let me see. Is -- (indiscernible)
5 specific -- does anybody want to be heard with respect to
6 the securities stipulation? Otherwise, I'm going to go
7 ahead and enter it and approve it, Ms. Cornell?

8 MS. CORNELL: Your Honor, this is Shara Cornell
9 with the Office of the United States Trustee. We had no
10 objection to the stipulation.

11 THE COURT: I think it's very important.

12 MS. CORNELL: Yes.

13 THE COURT: I really do. I have (indiscernible)
14 that it's central to this ongoing case. Does anybody else
15 want to be heard on that stipulation? All right, it's
16 approved.

17 THE COURT: It will be entered.

18 MR. KWASTENIET: Great. Thanks, Your Honor.

19 THE COURT: (indiscernible) we had, Mr.
20 Kwasteniet, I don't know whether I have a Word -- the Word
21 format of it has been submitted or not. Check with your
22 colleagues.

23 MR. KWASTENIET: I believe it has, Your Honor, but
24 that was maybe in connection with the last hearing. We will
25 re-send it after this hearing concludes to your Chambers.

1 THE COURT: (indiscernible), okay. Anybody with
2 respect to the Examiner, the Committee, you know --

3 MR. KWASTENIET: Your Honor, if I may, I just had
4 30 seconds more in conclusion, Your Honor, as we noted in
5 our statement, our main objective here is of course
6 efficiency and avoiding duplication. We do not object to
7 the topics raised in the Examiner's motion to clarify scope
8 as being appropriate topics to look into.

9 I'll note, Your Honor, the Examiner was tasked
10 with reviewing all the various submissions on the Docket.
11 The Examiner came up with the two, you know, topics that
12 they wanted to include in their clarification motion. We do
13 not object to those.

14 We do take issue with going, you know, further
15 afield, but we don't think that that's appropriate, but more
16 importantly, Your Honor, that's not my decision. That's how
17 the Examiner came out, and we support. We have no issue
18 with those topics.

19 The only question from our standpoint is, we don't
20 want to be responding to multiple sets of inquiries,
21 multiple interviews, etc., with respect to those topics.
22 And so long as there's clarification on who is doing those,
23 who is taking the lead on those, if you will, the Debtors
24 remain happy and willing to cooperate and to facilitate
25 those inquiries.

1 THE COURT: Happy may be an overstatement, but
2 willingly, okay.

3 MR. KWASTENIET: Understanding it's our
4 responsibility, Your Honor, which we take seriously.

5 THE COURT: Thank you, Mr. Kwasteniet. I'm going
6 to mispronounce the name, Johan Bronge. I don't know -- Mr.
7 Pesce, I'm going to give you your chance, but I want to hear
8 from people I haven't heard from.

9 MR. BRONGE: Yes, good morning, I think. My name
10 is Johan Bronge. I'm a pro se Creditor. I just want to
11 comment and support the request for that enlarged scope of
12 the Examiner. And also, to have the most neutral entity
13 doing this investigation, as it will enhance the confidence
14 in the end result. So I certainly think that should be the
15 right way forward. Thank you.

16 THE COURT: Thank you very much. Mr. Pesce?

17 MR. PESCE: Yes, thank you, Your Honor. For the
18 record, Gregory Pesce, White & Case for the Committee. I
19 just want to make a couple of quick comments in response to
20 Mr. Sabin's pleading, which was well taken, frankly, because
21 it is, in our view, already what we were doing.

22 So I've made these statements to other people in
23 the -- ahead of this hearing. It seems like there is some
24 confusion among the constituency and others here today over
25 what our investigation is doing. You know, we have read and

1 seen all of the press and media and social media reports.
2 We get calls. We get emails. We've seen the discovery
3 that's come in to date.

4 You know, we don't know today if Celsius was a
5 Ponzi scheme. But you know, there's -- there are some flags
6 there that have been sufficient for us already, you know,
7 over month -- a month, two months ago from the day we --
8 from right around when we got started to look into that
9 issue.

10 So let me make it clear today. The Committee is
11 looking into whether Celsius did things that would've made
12 it a Ponzi scheme. We don't know that today. We're going
13 to keep doing that, though, during our investigation. We
14 don't -- it's a fundamental part of our fiduciary duty to
15 run this down. We don't think we need an order doing it.

16 But yeah, we don't want to leave any doubt that we
17 are doing it, and if there's anything that comes of it,
18 we're going to make sure those claims are preserved. And if
19 there is a go forward business, that those actions by
20 whomever is running Celsius or whatever it's called in the
21 future do not befall people again.

22 So with that, we don't think it's necessary to
23 expand the scope to cover that. And we reiterate the need
24 to -- the need for speed here to get out of bankruptcy as
25 fast as possible to help the account holders, and to that

1 end, would hope the Court tries to limit the prospect of
2 duplication of between our work, the Examiner and other
3 parties' work here, as we have said earlier, so thank you,
4 Your Honor.

5 MAN: Let me have the docket for (indiscernible).

6 THE COURT: One other, Mr. Pesce. At least on an
7 interim report, the Examiner committed to producing an
8 interim report by December 10th. There obviously will be
9 further reports. You haven't committed as to when you're
10 going to report on whatever it is you're -- you know, the
11 Committee is doing.

12 So on the one hand, I have an Examiner who, and
13 her Counsel who said we'll do an interim report by December
14 10th. We can talk about what the rest of the schedule is,
15 versus an undefined, open-ended role work that the Committee
16 is doing. So that's certainly, you know, a lot of the
17 Creditors, pro se Creditors and not only pro se Creditors,
18 have raised these issues about, was this a Ponzi scheme?

19 Okay? And you say you're investigating it. But
20 that's one of my concerns is, who is investigating, what
21 constituencies do they represent? When will they provide a
22 report or facts, etc.? So let's take the Ponzi scheme
23 issue. What's the status of your work now?

24 MR. PESCE: We've gotten so far from the Debtor,
25 you know, tens of thousands of documents that exceed 100,000

1 pages in length. We've spoken to them at --

2 THE COURT: Well, is that just on the Ponzi scheme
3 issue or that's what you -- that's the universal documents
4 you've gotten?

5 MR. PESCE: I think a significant portion of that
6 pool of documents would be relevant to the things that are
7 being said about whether this is a Ponzi scheme or not,
8 because they go to how the money was being generated and
9 then distributed to Creditors prior to the case filing.

10 THE COURT: Right.

11 MR. PESCE: So we've done a significant amount of
12 work to date. You know, we did not plan to commit today to
13 giving a date for that part of our investigation. If you
14 would like us to give some type of interim report, you know,
15 in the near future regarding what we have found regarding
16 Ponzi scheme or related matters, that's something we could -
17 - that's definitely something we could take, could
18 definitely do to provide further clarity here.

19 Yeah, candidly, we've been a little remiss to do
20 that because one, while the Examiner has a drop dead date
21 for her report, you know, our claims, if we think they're
22 viable, will just be preserved for the later litigation
23 trust to pursue. And you know, candidly, we filed a bill
24 last week and have gotten a lot of feedback from the
25 community about how expensive this case is.

1 I'm a little reluctant to commit to take on
2 another project that would require further expenditure, but
3 if the Court requires us to do it, we would do it. But I
4 also think we could be made you know, Mr. -- if any of the
5 movants today have questions or they want to confer with us
6 about what we're doing, we're happy to do that.

7 I just -- I am a little concerned about the cost
8 of trying to generate these interim reports, as I'm sure the
9 Examiner was when, you know, we had the custody hearing a
10 few weeks ago. So but we will do whatever the Court --

11 THE COURT: I'm not pressing you for -- I raised
12 the point because a lot of the concerns that are being
13 expressed by Creditors, not only pro se Creditors is, okay,
14 we don't know whether it's next month, next year, whatever.
15 I'm not pressing at this point. Okay. Mr. Lazar?

16 MR. LAZAR: Yes, Your Honor.

17 THE COURT: What is the -- yours or the Examiner's
18 view about whether investigating whether or not the Debtor
19 operated a Ponzi scheme? Is that covered by the scope of
20 your investigation, not covered?

21 MR. LAZAR: Your Honor, we can -- a number of the
22 facts are probably already covered within the scope of the
23 examination. We would need to expand it a little bit in
24 terms of you know, some of the transfers we're looking at.
25 We need to look more specifically at customer deposits and

1 money going in and out.

2 But a good bit of that is covered already. As
3 Your Honor knows, we -- you know, we looked at the
4 customers', you know, and pro se submissions and we
5 generated what we thought were the two kind of fundamental
6 questions they were asking.

7 If Your Honor directs us to, we could certainly
8 include at least the facts from which parties could then
9 make arguments about whether there was a Ponzi scheme.

10 THE COURT: Here's what I want. First off, the
11 Examiner Work Plan motion, ECF 1013. And the Examiner
12 Motion to Convert Confirmed Scope, ECF 1112 are both
13 granted.

14 I would request direct that you and Mr. Pesce
15 confer and see whether you can come to an understanding
16 about who will focus on the so-called Ponzi scheme issues
17 that have been raised by today, Mr. Sabin, by other
18 Creditors as well.

19 What I would hope, not only on that issue, but
20 others, is that you maintain an open line of communication
21 with the Committee's Counsel, and as best you can, try and
22 avoid issues of duplication. I am sure that Mr.
23 (indiscernible), when he reviews fee applications, will keep
24 a keen eye on duplication, was it necessary or appropriate.

25 I am not going today on the record before me to

1 say who should do it, how they should do it, whether they
2 should deliver reports, what should happen. But what I
3 would like is for you and Mr. Pesce and the Examiner to
4 discuss this further, and certainly, you know, Mr. Sabin
5 wasn't the only one to raise the issues today, but I would
6 encourage you, both of you, to talk with him as well.

7 I think I really to the fullest extent possible
8 want to avoid duplication. I understand, you know, the
9 regulators who spoke all spoke in favor of both the work
10 plan and confirming the scope, and that's been granted. But
11 I'm certainly mindful of, this is an incredibly expensive
12 case.

13 And I'm mindful and worried about that. But so
14 that's going to be the Court -- Mr. Sabin, I don't want to
15 hear anymore today. Talk with Mr. Pesce, talk with Mr.
16 Lazar. If you can come to an agreement, see if you can put
17 it in the form of a stipulation with the Committee. If not,
18 you can raise it at a subsequent hearing, okay?

19 MR. LAZAR: Thank you, Your Honor. We will do so.

20 THE COURT: So let's move on, if we can.

21 MR. LAZAR: Your Honor?

22 THE COURT: Mr. Lazar, go ahead.

23 MR. LAZAR: If you can indulge me, would you mind
24 taking the two retention applications, which are unopposed
25 next so that I can let my team go?

1 THE COURT: Yes, absolutely. This is 13 on the
2 agenda. It's the Jenner & Block retention, and the Huron
3 Consulting retention. The Jenner & Block retention is ECF
4 962. The Huron retention is 1070. Those are the two, Mr.
5 Lazar?

6 MR. LAZAR: Yes, Your Honor.

7 THE COURT: All right. Ms. Cornell, do you want
8 to be heard on those?

9 MS. CORNELL: Shara Cornell on behalf of the
10 Office of the United States Trustee. No objection, Your
11 Honor.

12 THE COURT: Okay. Mr. Pesce, is your hand raised
13 on those two? Yeah, you're muted, but you've taken it down.
14 Okay, those motions are granted.

15 THE COURT: So Mr. Lazar, so the Jenner retention
16 and Huron Consulting retention 962 and 1070 are both
17 granted. And if you wish to be excused, you are.

18 MR. LAZAR: Thank you very much, Your Honor.

19 THE COURT: All right. Moving on. The Frishberg
20 Cost Cutting Motion, ECF Docket Number 1041. Mr. Frishberg?

21 MR. FRISHBERG: Yes, Your Honor. Thank you. I
22 want to bring up briefly, basically the Debtors and the UCC
23 objected to my amended motions. Are we going to be going
24 off of the amended motion or the original motions today?

25 THE COURT: Mr. Frishberg, I'm going to try and

1 say this in a nice way. When you file motions, this came up
2 once before, okay? There are deadlines for filing motions.
3 There are deadlines for responses to motions, and there are
4 deadlines for reply. You think they don't apply to you.
5 They do. Okay?

6 MR. FRISHBERG: I filed them on the 13th. And
7 they said (indiscernible) --

8 THE COURT: You've got to stop, okay?

9 MR. FRISHBERG: Okay, yes, Your Honor.

10 THE COURT: I am -- you know, I realize you're not
11 a lawyer. I bend over backwards to try and listen to what
12 everybody has to say. But motions, you know, and objections
13 and response -- and replies to them, they're meaningful for
14 me, for me and my staff and for all of the parties in
15 interest.

16 So I'm going to deal with your first amended
17 motion. You have two motions. We can deal with them both
18 together. The cost cutting motion is 1041. The so-called
19 clawback motion is 1042. So go ahead and speak to both of
20 them.

21 MR. FRISHBERG: Yes, Your Honor. The fact that
22 the Debtors are spending estate -- (indiscernible) resources
23 to effectively fight cost cutting -- needed cost cuts is, in
24 my opinion, ridiculous. I don't think that actively
25 delaying or stopping the (indiscernible) from saving money

1 is in the best interests of the estate.

2 The only people who benefit from the preventing
3 cost cuts are insiders and executives and not the Creditors.
4 I believe that it is crucial to the recovery of the
5 Creditors that are -- that the costs are cut as much as
6 humanly possible and as fast as possible.

7 Every day, the estate loses over a million
8 dollars, and that is not including the various lawyers'
9 consultants, which are billing quite a lot. The Debtors
10 have failed to adequately cut costs, in my opinion.

11 And in their objection to my motion, they claim
12 that costs have been cut in certain sections between 70 and
13 80 percent in certain areas. But I did the math, and those
14 seem to be fairly minor because they add up to roughly \$160
15 million. And going off of the previously released numbers
16 that I -- was the most up to date that I have, there's a
17 total of roughly half a billion dollars remaining that has
18 not been cut.

19 Because originally, roughly \$660 million a year.
20 The Debtors -- and they also reference their business
21 judgment in how they have, how do you call it -- they can
22 use their business judgment and discretion. I believe their
23 business judgment is quite poor. Their business judgment is
24 actually what got us into this entire bankruptcy.

25 They have allegedly lied to their customers,

1 investors and regulators, and are -- if opposing, basically
2 the examination of their statements. And the Debtors are
3 specifically opposing examination of other -- Celsius and
4 other parties participating in the manipulation of these
5 sell tokens.

6 I believe that this examination would gain the
7 estate significant claims, which they could use to recover
8 large sums of money. Their business judgment has lost the
9 depositors and Creditors and some investors approximately \$3
10 billion, which is roughly (indiscernible), which has
11 seemingly vanished into thin air.

12 Various regulators have alleged that they have
13 committed securities fraud, fraud, gross incompetency, and
14 gross mismanagement, which obviously is not the best
15 business judgment. And they also continue to resist cutting
16 costs. Celsius is not only not cutting costs, but they
17 recently with the current motion attempted to spend
18 approximately \$3 million on what the US Trustee noted also
19 may include bonuses to insiders.

20 And Celsius was losing approximately \$14 million a
21 month with the mining venture by mining Bitcoin at a loss.
22 And but right now, it's currently unclear exactly what's the
23 size of the mining company at its core, the company that, to
24 the best of my knowledge, hosted the majority of Celsius
25 (indiscernible) is getting ready to declare bankruptcy

1 potentially.

2 And the Debtors claim to be transparent. My
3 favorite quote of theirs is, if I recall it correctly, there
4 is nothing to see here, Your Honor, which they said in your
5 courtroom. Obviously, there is quite a lot to see here.
6 The UCC has been unable to get certain documents.

7 And such as those are (indiscernible) by the
8 Debtors, I believe. And Celsius exposed the -- opposed the
9 expansion of the Examiner's scope. And I believe the UCC
10 opposed it as well for supposed cost cutting reasons. But
11 they have no problem giving out large bonuses and billing
12 millions of dollars to the estate.

13 I think it's way past time to stop letting the
14 Celsius investigate themselves, because of course, they will
15 find that they did nothing wrong, regardless of the
16 circumstances of the facts. They are so transparent, in
17 fact, that they apparently have updated documents for their
18 financials, which they referenced in their objection.

19 But they have not publicly released and I haven't
20 seen them. What I find ironic is they criticized me for
21 using so-called outdated information while not providing any
22 new information. They can't have it both ways. They can't
23 both be concerned about the rising costs for stuff like the
24 Examiner, while spending millions of dollars fairly
25 (indiscernible) and they can't accuse me of using outdated

1 information while failing to share outdated information with
2 everyone except the people that are privy to the so-called
3 (indiscernible) room for bidders which cost about \$10
4 million to gain access to.

5 They need to either start doing their jobs or be
6 replaced by either a Chapter 11 Trustee or a Chief
7 Restructuring Officer that is not a Chapter 11 Trustee who
8 will do the job for them. While Celsius may have indeed
9 quite -- cut quite a bit of costs and done some cost cutting
10 measures, they still have quite a bit more fat to be
11 trimmed.

12 In my opinion, the Special Committee, which has
13 its own conflicts of interest need to be cut. We are paying
14 Mr. David (indiscernible), the Head of the Special
15 Committee, one of the elected members roughly \$108,000 a
16 month. And he somehow has enough time to go onto TD
17 Ameritrade's TD program and talk about stocks, which are
18 (indiscernible) to Celsius.

19 Nobody, including the UCC outside of Celsius has
20 been able to get a direct meeting with the Special
21 Committee. And only the UCC has been able to get a meeting
22 with -- through various counsels as far as I can understand.
23 It begs the question, what exactly are they doing, if
24 they're not meeting with people and they're not proposing a
25 plan because they don't actually have a plan.

1 They have not -- they're not making a plan.
2 Celsius seems to have as much of a plan as they did on day
3 one. The executives and insiders should also be cut without
4 severance packages since not only are they the ones who got
5 us into this huge mess in the first place, but a lot of them
6 are likely to be targets of clawbacks.

7 And I think they bring no value to Celsius and
8 actually, they do farm more harm than good, as they are
9 likely actively hindering clawbacks, which would be
10 targeting them or their associates and investigation
11 efforts.

12 The Debtors noted in their reply that in their
13 view, the UCC is unable to start clawbacks yet. And they
14 only are the ones able to do clawbacks and they reserve all
15 discretion to do so, but they're not actually doing any of
16 it. We can't (indiscernible) the Debtors to decide if they
17 and their buddies and the people who basically appoint them
18 to their positions should be getting clawed back. It defies
19 logic and it's a massive conflict.

20 In the filing of the (indiscernible) motion, the
21 Debtors actually told us who is essential, and I guess who
22 is not, essentially speaking. All employees that not on the
23 (indiscernible) list, including executives, insiders and
24 board members, committee members, etc., should be terminated
25 immediately because they're unessential apparently.

1 The Debtors pointed out an issue of employee
2 morale in the (indiscernible) motion about how some
3 employees already started resigning after it was filed. I
4 do agree with them. It is a serious issue.

5 I ask everyone, how would you feel if you were
6 effectively marked unessential, which just basically means
7 expendable, and you did not receive a bonus (indiscernible)
8 --

9 THE COURT: I'll give you one more minute.

10 MR. FRISHBERG: Okay, I'll wrap it up. Just for
11 the cost cutting motion or for all motions combined?

12 THE COURT: (indiscernible).

13 MR. FRISHBERG: Okay. I'll skip over to the
14 clawbacks. The Debtors don't seem to have any plan of
15 action starting clawbacks. They've had over four months to
16 do so. They seem to be quite happy just sitting around
17 wasting money and billing hours to Creditors.

18 They don't really care because they get paid by
19 the amount of time elapsed, not by if the bankruptcy is
20 exited successfully. They seem to be waiting to do this for
21 years and years. We are not closer to any sort of
22 restructuring or returning funds to the Creditors, which
23 were effectively stolen by insiders and (indiscernible) four
24 months ago.

25 This cannot be allowed to continue. A lot of the

1 stuff that the Debtors have done is grounds for the Trustee.
2 And if they are unable to start doing it, they should be
3 replaced by a Trustee. The Debtors do not seem to want to
4 get to the real issue at hand, which is the executives and
5 the insiders to the root causes of the bankruptcy.

6 And because also, insiders would (indiscernible)
7 almost \$110 million within a year of depositing withdrawals.
8 And this doesn't even take into account the salary,
9 potentially hundreds of millions of dollars in salaries and
10 compensations paid out to employees, which insiders got the
11 lion's share of.

12 Also to address the Debtor's response to my
13 objection in Savina, in one of the cases they cited, the
14 reason one of the Creditors, I believe Bayside was denied
15 the ability to pursue clawbacks was because the UCC was
16 already pursuing it vigorously.

17 Obviously, the same is not true in this case.
18 Various institutions such as Tether and FTX received very
19 large preferential payments, which cost the estate literally
20 hundreds of millions of dollars. Those payments should be
21 clawed back fully, regardless of the fact that they had a
22 business relationship for a while at Celsius (indiscernible)
23 fairly meaningless in the eyes of the bankruptcy law, I
24 believe.

25 And they should get in line with the rest of the

1 Creditors and receive the pro rata distributions, literally
2 billions of Celsius' dollars flowed through FTX and 60
3 percent of massive conflict. These are the easiest
4 clawbacks to receive and Celsius seems to have not even
5 started on those.

6 FTX -- but it is highly (indiscernible) that FTX
7 helped Celsius manipulate the price of sell tokens, which
8 inflated its value and made Celsius appear to be solvent
9 when they were factually insolvent, which effectively helped
10 continue this deception.

11 And the estate potentially passed claims against
12 them for that, because they could be partially fill
13 (indiscernible). The longer we take to do clawbacks, the
14 less and less money is able to be recoverable. It is
15 crucial that they start as soon as possible, because the
16 funds are getting harder to recover by the second.

17 It is likely that a large percent of the funds are
18 now irrecoverable because once they leave US jurisdiction,
19 it'll be very hard to recover them, even if nobody attempts
20 to take steps to (indiscernible).

21 If certain individuals like insiders decide to
22 attempt to hide them using assets such as (indiscernible) or
23 various NFTs, such as the ones that were moved from KeyFi's
24 wallet to USA (indiscernible) wallet, it'll be almost
25 impossible to recover them.

1 NFTs are a way that could've potentially been used
2 to effectuate transfers of assets from Debtors to other
3 parties such as insiders. They were used in the I guess,
4 I'll call it the KeyFi embezzlement, where Jason Stone
5 allegedly stole hundreds of millions of dollars.

6 It has been noted that he did buy numerous NFTs,
7 most of which are still unaccounted for. The Debtor's UCC
8 or the Examiner should --

9 THE COURT: Mr. Frishberg, finish up.

10 MR. FRISHBERG: Okay. They should be ordered to
11 compile a list of all NFTs that were bought from Celsius'
12 assets or the proceeds of those assets. And the list should
13 include basically how much they were bought for, if they
14 were sold for, and where they currently are now.

15 If the UCC is unwilling to pursue the clawbacks
16 because of various conflicts, which one of the targets of
17 the clawbacks is Tether, one of their clients, then
18 (indiscernible) Counsel should be brought in to pursue those
19 matters. I have to admit that I and many Celsius Creditors
20 are extremely disappointed by the lack of action from the
21 UCC. They should be the ones filing these motions, not me.

22 THE COURT: All right, stop.

23 MR. FRISHBERG: Thank you very much. Have a good
24 day.

25 THE COURT: Debtor?

1 MR. LATONA: Good morning, Your Honor. Again, for
2 the record, Dan Latona of Kirkland & Ellis on behalf of the
3 Debtors. I'll address directly the substance of the
4 motions, and I'll take each in turn, because I think
5 proceeding down the course that Mr. Frishberg proposes would
6 significantly undermine his goals of cutting costs and
7 proceeding (indiscernible) through these Chapter 11 cases.

8 First, with the respect to the cost cutting
9 motion, the motion does not state a proper relief -- basis
10 for relief under the Bankruptcy Code. The Debtors are
11 operating their business as Debtors in possession under
12 Section 1107 of the Bankruptcy Code.

13 And as such, their actions are subject to the
14 Business Judgment Rule. And as stated in our objection, the
15 Debtors have already significantly reduced expenses,
16 proceeding down with the Draconian personnel reductions that
17 Mr. Frishberg implies could significantly impact other state
18 regulatory regimes, regarding mass layoffs, including the
19 Warren Act, which would require the Debtors to do a state by
20 state analysis of whether the Debtors are subject to the
21 Warren Act or any other statutes in that state, which could
22 further increase costs and subject the Debtors to statutory
23 notice requirements in other potential liability.

24 With respect to the clawback motion, avoidance
25 actions are property of the estate and will remain property

1 of the estate. And parties in interest cannot compel the
2 Debtors to pursue clawbacks, unless they unjustifiably state
3 to do so.

4 It should be noted that the Debtors are briefing
5 relative legal issues to clawbacks in connection with the
6 custody and withhold motions and will be pursuing test cases
7 with respect to clawbacks. Furthermore, the Debtor's
8 Special Committee and the Creditor's Committee are
9 investigating whether and to what extent avoidance actions
10 do exist.

11 Pursuing avoidance actions now would involve
12 initiating a number of costly and costly adversary
13 proceedings, which would further delay this process and
14 bring us no closer to concluding these Chapter 11 cases. So
15 in short, both the cost cutting motion and the clawback
16 motion should be denied.

17 THE COURT: All right. The Court's taking both
18 under submission. Let's move onto the Kwok Mei Po motion.
19 It's --

20 MR. LATONA: Your Honor, I'll be ceding the podium
21 to my colleague, Mr. Scheffer.

22 THE COURT: I was saying that the Kwok Mei Po
23 motion --

24 MS. PO: Your Honor?

25 THE COURT: Stop, stop. Just wait. Wait. The

1 motion is filed as ECF Docket Number 877. The Debtor has
2 filed an objection, which is ECF Docket Number 1106. Go
3 ahead.

4 MS. PO: Your Honor, thank you so much for the
5 opportunity to talk. I am really nervous right now,
6 actually because it's my first time in Court, and English is
7 not my first language, and it's really late right now. And
8 I have been preparing all these by myself without any legal
9 background, so please bear with me, if this is not sounding
10 very professional.

11 I would -- this motion has two main purpose, which
12 was filed as Docket 877, which is to see a ruling -- first
13 thing is to seek a ruling of title of ownership for the
14 suspended of closed account users. And the second is for
15 the Debtor to release the relevant information regarding
16 these accounts, including a number of accounts, failure of
17 accounts and the stage of suspension. Your Honor, I have
18 been --

19 THE COURT: Let me, okay. As a legal matter,
20 you're entitled to proceed with respect to your own
21 accounts. As I understand it, you have multiple accounts.
22 To the extent that you're motion is seeking relief for other
23 people, not your accounts, you're not able to do that. So
24 what I want you to do is on what relief you're seeking with
25 respect to your accounts, okay?

1 MS. PO: Understood, Your Honor. My accounts, I -
2 - sorry. My motion's main purpose is to seek a ruling of
3 title of ownership. At this point, I understand that with
4 all the other matters going on, including custody accounts,
5 it's not a mature time to ask for relief of automatic stay,
6 so this is not what I am currently asking for my motion, if
7 this has been cleared.

8 But then, according to what was stated in my
9 motion, I want to make the arguments that we have the title
10 of ownership of our funds, and which was stated in the
11 motion 877.

12 THE COURT: Were your accounts earn accounts or
13 did they become custody accounts?

14 MS. PO: My accounts was earn accounts, but they
15 were discontinued by the Debtor on -- in May, which has --
16 they have blocked my account access since then. And then, I
17 had no -- I was not able to lock in and I was not able to
18 see my funds or have any control over my funds.

19 And according to the Section 19(a) in the term of
20 use, they have clearly stated that we have -- they have the
21 right to suspend our account and close our accounts,
22 including by blocking your access to the account. But then,
23 if they block our account access when they -- and then, when
24 they close it, then they will repay and return the remaining
25 digital assets to you.

1 So I believed in good faith that they were to
2 return our funds. And also, we have contacted the Celsius
3 Compliance team, and then the email reply states that they
4 were going to return our funds back to us.

5 THE COURT: May I ask you just which section of
6 the terms of use did you refer to?

7 MS. PO: It was Section 19(a), Your Honor.

8 THE COURT: Go ahead. Yeah, go ahead.

9 MS. PO: Yeah, and also, according to Section --
10 according to Section 4(d), earned rewards, they have also
11 stated that you will -- if an earned service is available to
12 you, you'll lend your digital assets to Celsius and grant
13 the rights to -- and title to these assets for Celsius to
14 use, while using the earned service.

15 But then, at the time that they have replied to us
16 and then they have blocked our accounts, they have actually
17 stated that in the email reply, from the compliance team,
18 they have actually stated very clearly that the account has
19 been blocked and suspended, which was equivalent to being
20 closed, because in the term of use, they have not made a
21 differentiation between suspension and closure.

22 It was not stated in the term of use. It may be
23 intentionally and (indiscernible). And also, Kirkland's
24 objection has also agreed to this point as well. So they
25 have closed -- effectively closed our accounts, and then

1 they have also stated that referral awards and any interest
2 presented to this account will be canceled.

3 So effectively, we were not earn account holders -
4 - we were de facto earn account holders. And we were not
5 even active customers because the Debtor refused to provide
6 service for us, as they closed our accounts, which is why
7 they should follow the action that they have stated in the
8 Section 19(a) to repay and return the funds to us, and also
9 as confirmed by their compliance team, they were also going
10 to do that.

11 So we have the belief in good faith that the fund
12 return was in progress. And also, according to Section
13 4(d), because we were not active earn customers, and then
14 order interest has been discontinued. So we were not
15 actually even the (indiscernible) customers.

16 So and it was also not a valid -- fair acumen to
17 say that because we were previously in earn accounts, and
18 then we still belong to earn accounts because a group of
19 custody holders, although I am not from custody holders, but
20 then, they have been previously in earn, but then the Debtor
21 has verified and declared a title of ownership to these
22 accounts at -- to these custody account holders as well,
23 irrespective of their previous earn status.

24 So it would be unfair to say that because I was
25 previously in earn, that my surface has been discontinued

1 from the Debtor. I will still be considered the same as
2 earned because I am supposedly not even a valid customer of
3 them.

4 And should the Debtor come off Chapter 11 and form
5 a new reorganized company, we don't actually hold any
6 position in the new reorganized company because we are not
7 even the valid customers. So while that -- and also, I
8 would like to state that while the US customers had an
9 option of exit to move their funds to the custody accounts,
10 this option was never available to international customers
11 like me.

12 So it is fair to say that the non-US customers
13 have been subjected to the lowest, least favorable priority
14 in this case, which this inherent unfairness was against the
15 co-principal of equity in the US bankruptcy system as well.

16 So I would like to humbly ask Your Honor to rule -
17 - to seek Your Honor's ruling on the title of ownership of
18 the funds to these accounts, and for these accounts to be
19 considered alongside the custody and (indiscernible)
20 accounts, which they have been declared title of ownership
21 to in the relevant hearing, and for the Debtor to release
22 other relevant information regarding these accounts.

23 I have also prepared some response to Kirkland's
24 objection to my motion, but in case, I don't want to be
25 spending all the time talking about my motion. I would like

1 to be considered -- and I would like to see if Kirkland has
2 anything to talk about regarding the objection. And I can
3 provide a response to their objection as well.

4 THE COURT: Let me stop you there. Thank you very
5 much, Ms. Kwok. All right, the Debtors --

6 WOMAN: If I --

7 THE COURT: -- ECF Docket Number 1106. Who wants
8 to speak for the Debtor?

9 MS. SCHEFFER: That'll be me, Your Honor. Good
10 afternoon, it's Tommy Scheffer of Kirkland & Ellis on behalf
11 of the Debtors. Kwok Mei Po is a customer of the Debtor's
12 earn program, whose earn accounts were suspended pursuant to
13 misuse of the referral program.

14 In her motion, she asked for relief from the stay,
15 set cryptocurrency and her earn accounts can be returned to
16 her. She also asked the Court to rule on the question of
17 who holds title to the cryptocurrency assets and suspended
18 and closed earn accounts.

19 Kwok Mei Po's motion should be denied because she
20 has not demonstrated cause to lift the stay for a Claimant
21 of the (indiscernible) factors. Not only does Kwok's motion
22 implicate larger legal questions that should not be resolved
23 on an individual basis, Kwok is similarly situated to all of
24 the other Unsecured Creditors, and therefore, should be
25 subject to the same rules as this Court -- go --

1 THE COURT: I made -- hopefully made clear that
2 I'm only considering her issues, and not the issues of any
3 other parties. You've indicated that her accounts were
4 suspended for misuse. Under the terms of use, was there any
5 change or alteration in the ownership of the assets in her
6 account, when her account was suspended?

7 MS. SCHEFFER: My understanding is that the
8 withdrawals, or sorry, not the withdrawals, the interest
9 that was earned pursuant to the misuse of the referrals was
10 taken back. But other than that, no, Your Honor.

11 THE COURT: Can you tell me in the Debtor's
12 schedule, whether you've included Ms. Po's claims in the
13 schedules and how you've listed them?

14 MS. SCHEFFER: Amongst all the other earn account
15 holders, Your Honor.

16 THE COURT: Specifically, what is it that you've
17 listed with respect to -- you know, finding anything in
18 almost 15,000 pages is not easy. And so, my question is
19 specifically how have you listed her claims in the
20 schedules?

21 MS. SCHEFFER: As a General Unsecured non-priority
22 claim.

23 THE COURT: How many entries, or she had multiple
24 accounts. How many entries are there in the schedules for
25 Ms. Po's account -- accounts, plural?

1 MS. SCHEFFER: I don't have that information in
2 front of me, Your Honor.

3 THE COURT: Okay. What, if anything, are you
4 relying on in the terms of use for the issues of ownership
5 of the property and these accounts, when they were
6 suspended?

7 MS. SCHEFFER: Your Honor, I'm loathe to get into
8 that, because it implicates a lot of larger legal issues in
9 this case, but to just answer --

10 THE COURT: You're loathe to get into it, but
11 she's raised the issue. And I think it's relevant to her.
12 I'm not asking with respect to anyone else. I'm asking you
13 with respect to Ms. Po. You can't avoid my questions.

14 MS. SCHEFFER: Understood, Your Honor. The terms
15 of use provide the title transfers to the Debtors upon
16 deposit. And also, that amounts -- accounts are allowed to
17 be frozen or suspended at any time.

18 THE COURT: Is that in your objection?

19 MS. SCHEFFER: I don't believe so, Your Honor.

20 THE COURT: Do you think you might actually want
21 to address the issues that pro se's are raising?

22 MS. SCHEFFER: Your Honor, we took this motion as
23 a motion for relief from the stay, as well as for a
24 declaratory judgment on the ownership of the assets.

25 THE COURT: All right. I want a supplemental

1 filing from the Debtor with respect to Ms. Po's motion. I
2 want the specifics of each entry in the claims register with
3 respect to her account. I would like -- and you provided
4 the details of when her account was suspended?

5 MR. SCHEFFER: I'm sorry, Your Honor?

6 THE COURT: You provided the details of when her
7 accounts were suspended and why?

8 MR. SCHEFFER: I believe so.

9 THE COURT: (indiscernible) sworn in a
10 declaration?

11 MR. SCHEFFER: Not in a declaration.

12 THE COURT: I have to rule on evidence, not on
13 your non evidentiary assertions.

14 MR. SCHEFFER: We've attached some email exchanges
15 as Exhibits A and B to the objection. Those indicate a
16 little bit of the timing, but we did not file any
17 declarations in connection with the objection, Your Honor.

18 THE COURT: When -- all right. When will you file
19 details of her transactions and the reasons for the
20 suspension of her accounts and any legal argument you're
21 making as to what, in the terms of use, lie with respect to
22 the issues that Ms. Po has raised. You can't simply blow
23 off pro se creditors. I'm not going to put up with it.
24 Okay. You may not like having to respond to motions of pro
25 se creditors, but I expect full responses and I don't

1 believe you gave the with respect to Ms. Po's. So when can
2 you do the supplemental?

3 MR. SCHEFFER: I'd like to confer with my
4 colleagues, but I'm sure some time before the next hearing,
5 that we said 11/15 is fine, as long as it's all right with,
6 Your Honor.

7 THE COURT: No that's too indefinite. I'm going
8 to give you a deadline. Okay. The Debtor shall file
9 supplemental papers, including a declaration -- one or more
10 declarations on or before 5 p.m. November 8th. Ms. Po can
11 respond on or before 5 p.m., New York time, November 15.
12 The Court will consider any supplemental response by the --
13 supplemental objection by the Debtor and any additional
14 response by Ms. Po, and after receiving them, I'll decide
15 whether to schedule another hearing (indiscernible) based on
16 the papers. I'm so ordering the transcript with respect to
17 those dates to get them (indiscernible) the Debtor's filing
18 before 5 p.m., November 8th, that's New York time, and Ms.
19 Po's supplemental filing on or before 5 p.m., November 15th,
20 New York time. With that, I'm going to take -- we'll --
21 I'll take up the matter after I get the supplemental
22 filings.

23 Do you understand Ms. Po what -- I'm going to give
24 you -- I'm requiring the Debtor to file an additional filing
25 and then I'm giving you, basically a week maybe to respond

1 to it. Okay?

2 MS. PO: Understood, Your Honor. May I
3 supplemental a little bit more regarding what was discussed
4 just now?

5 THE COURT: No, I don't want to hear any more.

6 MS. PO: Okay.

7 THE COURT: I've read all the papers.

8 MS. PO: Okay, thank you very much, Your Honor.

9 THE COURT: (indiscernible). The Barstow motion
10 to consider all, basically, all USDC Investors and Secured
11 Creditors, that's ECF 950. The whole motion to consider
12 stable coin creditors as secured creditors. It's ECF 965.
13 And the Saker motion to consider tether gold creditors as
14 secured creditors, as ECF 990. I'm going to consider those
15 three motions together. Does Mr. or Ms. Barstow wish to be
16 heard?

17 MS. BARSTOW: Hi, good morning, Your Honor. Well,
18 I would like to be heard. I did just submit a supplemental
19 -- not supplemental motion, but it's actually a response to
20 the objections of the Debtor and unsecured -- excuse me --
21 Creditor's Committee for the Motion. And so, I just wanted
22 to go briefly over that. So basically the Debtor replied in
23 their motion objecting to the request for USDC slash -- in
24 my amendment, I include GUSD, which is another stable coin,
25 which is the same as USDC, fundamentally. And so in Article

1 I, Section 8 of the US Constitution, well -- Congress
2 authorizes uniform laws on the subject of bankruptcy. This
3 is the Federal Bankruptcy Court. The doctrine of
4 presumption state that when a problem arises between state
5 and federal law, pursuant to the supremacy clause, which is
6 Article 6 of the US Constitution, federal law supersedes
7 state or local law, and state or local law must give way for
8 (indiscernible) the state law cited by the Debtors regarding
9 the lien needing to be perfected by a written voluntary
10 agreement is invalid.

11 The undersigned has perfected a lien on her
12 interest in the estate through a financing statement, a UCC
13 financing statement, which is attached to this and which is
14 also filed the claim with the Bankruptcy Court. In addition
15 to that, her and all other stable coin earn account holders
16 have perfected a lien through control of the account prior
17 to the bankruptcy, which was noted by Jack Sell and his
18 related Joinder motion. And this was done by the ability to
19 deposit and withdraw, and close and account before the
20 bankruptcy petition, without the prior consent of the
21 Debtor. And pursuant to USC5 SSA an allowed claim of the
22 creditors secured by a lien on a property in which the
23 estate has an interest; the creditors have an interest in
24 the estate because of the abovementioned perfection methods
25 of the lien, pursuant to Article 9 of the Uniformed

1 Commercial Code, the undersigned and other stable coin
2 holders have made the interest in the estate public by the
3 motion. And the undersigned UCC Financing statement that I
4 have submitted to this Bankruptcy Court.

5 Article 9 of the Uniformed Commercial Code states
6 the secured party has control of the deposit now the Debtor,
7 secured party, and bank have agreed and authenticated record
8 that the bank will comply with instructions originated by
9 the secured party, by a (indiscernible) disposition of the
10 fund in the deposit account without further consent by the
11 Debtor; or the secured party becomes the bank's customer
12 with respect to the deposit account. The Debtor's right to
13 direct disposition of (indiscernible) for the secured party
14 that has satisfied subsection A has control, even if the
15 Debtor retains the right to direct the disposition of funds
16 from the deposit account.

17 The record that the Debtor agrees to disposition
18 of funds is in the terms of use where they state we may
19 deposit, withdraw, or close the account at any time and we
20 do not need prior consent for these transactions if not in
21 bankruptcy. The Debtor and its counsel have referred to
22 Reachill Creditors as its customers, so that satisfies
23 number three of Article 9, Uniformed Commercial Code right
24 there without even perfecting it in the other respect.

25 The unsecured creditors committee state in the

1 motion -- that the motions did not state why the liens are
2 unavoidable. Pursuant to USC 523 Federal Bankruptcy Code
3 4007, Exceptions to Discharge that makes these liens
4 unavoidable, include for money, property, and services to
5 the extent obtained by false pretenses, or false
6 representation, or actual fraud. The creditors in this case
7 have put voluminous evidence on the record with this
8 bankruptcy court in regards to the numerous false
9 misrepresentations that occurred in the weekly AMA videos of
10 CEO Alex Mashinsky. These representations involved
11 pretenses or fact that cannot be disputed. If it were not
12 for these false misrepresentations, the undersigned and
13 nearly every other creditor in this case would have ever put
14 any money into a (indiscernible) account. See the numerous
15 letters, motions, slash responses written by (indiscernible)
16 creditors on the docket with YouTube links. Use of
17 statement in writing that is materially false respecting the
18 Debtor's or insiders financial condition. And in terms of
19 that, there was a letter written about a week prior to the
20 freezing of withdrawals, where there was a material false
21 statement regarding the financial condition, which is
22 submitted in evidence by other creditors, and I have a
23 printed copy of right here, entitled Damn the Torpedoes,
24 Full Speed Ahead. In it, it says, associates continue to
25 process withdrawals without delay. We have not had any

1 issues meeting withdrawals with class, sales use honors all
2 withdrawals as quickly as possible and works hard to support
3 customers if and when there are delays. Sales Piece has the
4 reserves and more than enough (indiscernible) to meet
5 obligations, as dictated by our comprehensive liquidity risk
6 management framework. They go on to say that they have the
7 best risk management team in the world. All of this clearly
8 false, since, you know, about a week later they withdraw and
9 a month later filed Chapter 11 Bankruptcy.

10 THE COURT: All right. So let me ask you -- let
11 me ask you a question.

12 MS. BARSTOW: Sure.

13 THE COURT: We're looked at the schedules, the
14 Debtor's Schedules that they've filed. And it lined
15 3.1.426630 the schedules are lengthy. It shows that you had
16 an Earn account. Do you agree that you had a Earn account?

17 MS. BARSTOW: Yes, Your Honor.

18 THE COURT: And it lists in the amount of your
19 claim, they have, I think, two of -- there are four entries,
20 and I think two would be for stable coins, your motion
21 focused on -- bear with me. Your motion focused on the
22 USDC, but you also had a GUSD --

23 MS. BARSTOW: Yes, Your Honor. And in my amended
24 motion I write that I'm including to consider the GUSD coin
25 as secured creditors as well, and that also goes along with

1 the other motion, including stable coin holders as secured
2 creditors in general. The US -- GUSD --

3 THE COURT: It's not here. Again, I'm not going
4 to consider what, if any, rights anybody else has.

5 MS. BARSTOW: Okay.

6 THE COURT: Your motion is focused on you and
7 we've seen that there are four entries in the schedules, one
8 for GUSD, one of USDC, both of which are stable coins.

9 MS. BARSTOW: Those should be the only entries,
10 Your Honor. I don't have any other coins.

11 THE COURT: No, actually -- actually, if you look
12 at the schedules, there are two other entries. One for Sell
13 Token, I guess. It's listed as Sell and it's -- it's got a
14 long 1. Very long --

15 MS. BARSTOW: Yes, Your Honor, that's a very
16 minimal amount of Sell and I'm not claiming the Sell, and
17 the bitcoin is a very minimum amount of bitcoin, and I'm
18 also not claiming that.

19 THE COURT: Well, they've listed you as a creditor
20 for both bitcoin and sell token. I mean, there are four
21 entries for you --

22 MS. BARSTOW: Okay.

23 THE COURT: -- on the schedule. I've indicated
24 the why. Let me say, because I wanted to treat the motions,
25 your motion, the Holcomb Motion, and the Saker Motion

1 together. We've actually gone to the schedules and looked
2 for each of the -- those four creditors, what was listed on
3 the schedules, and yes for each of the four, there are
4 entries for stable coin. I want to -- so there's multiple
5 entries for each, but just focusing on you. What I don't
6 know -- can you tell me anything about what your history
7 with this account was? You deposited. Did you withdraw?
8 Did you deposit in different times? Withdraw different
9 times? Can you shed any light on that?

10 MS. BARSTOW: Sure, Your Honor. So I initially
11 deposited in, oh my goodness, I would say 2020, about 2020.
12 I'm not 100 percent sure on that, however, yes there were
13 multiple deposits and withdrawals from my account with the
14 prior consent of the Debtor's. I withdrew many times on the
15 interest of the account while keeping the principle there.

16 THE COURT: (indiscernible) for example, if you
17 had USDC deposit, was the interest paid in that stable coin
18 or in some other form of a payment of interest?

19 MS. BARSTOW: So my interest was paid in the coin,
20 in the USD or GUSD coin. So it was basically could be
21 traded and sold for cash, which is the underlying collateral
22 of those coins.

23 THE COURT: And did you -- did you actually
24 withdraw the earnings?

25 MS. BARSTOW: Yes, Your Honor, I did withdraw some

1 of the interest earnings, several times.

2 THE COURT: All right. All right. Is there
3 anything you want to add? I have questions I'm going to
4 want to ask the Debtor because I -- you know, without
5 understanding the transaction histories or each of these
6 credit -- you and Holcomb, and Saker, I have a hard time
7 evaluating the arguments. Well, I'll ask the Debtor --
8 Debtors about that. Anything you want to add to your
9 argument?

10 MS. BARSTOW: Yeah, sure. So in my original
11 motion, I state that Page 7, Paragraph 17, the Debtors admit
12 to the fact that they used stable coin not only to fund
13 business operations, but also to fund loans backed by trust
14 and collateral. And essentially, what that means is that
15 there are two different classes of retail customers on the
16 Sells use platform. The earned customers, which are
17 essentially creditors, or lenders; and then there are
18 borrowers or co-debtors of the Sales Use. These retail and
19 institutional borrowers typically -- well, 100 percent sure
20 that the retail borrowers always have to post collateral, as
21 that was the rule of Celsius. So anytime a retail borrower
22 posted -- requested a loan, which was received in cash, they
23 -- they put five bitcoins deposited into Celsius. And then
24 say they wanted a loan, they could loan up to, I believe it
25 was about 50 percent of the deposits and the rest was

1 pledged as collateral for that loan. So they would get five
2 bitcoins deposited and they wanted a two and a half bitcoin
3 loan, they would apply for that with Celsius and upon
4 approval from Celsius, they would post that collateral and
5 get the loan in cash. And Celsius would sell the stable
6 coin for the cash to fund those loans. Therefore, that's
7 the interest in the collateral that I'm claiming. That
8 collateral was then rehypothecated to other institutional
9 borrowers in order to probably swing, trade, swop trades and
10 all the other risky things that they did with those
11 bitcoins.

12 THE COURT: Do you agree that the terms of use
13 permitted them to do that?

14 MS. BARSTOW: I do not. What I understood that
15 they were doing was essentially everything was
16 collateralized.

17 THE COURT: Did the terms of use permit Celsius to
18 hypothecate, rehypothecate transfer anything that you
19 deposited into an Earn account?

20 MS. BARSTOW: The initial terms of use, I'm not
21 sure. I read it and if those terms were in there, I had no
22 idea what they meant. I'm an unaccredited investor. Part
23 of my -- part of my statement is also addressing the
24 violations of the SEC in terms of allowing individuals that
25 were unaccredited investors into what are essentially

1 secure, unregistered securities.

2 THE COURT: Yeah, but they -- look, you may be
3 right, you may be wrong. I'm not -- I'm not taking a
4 position on that. But I know of no authority that would
5 convert an unsecured claim into a secured claim because
6 Celsius violated state or federal securities laws in the way
7 they were conducting their business. Have you read the
8 terms of use?

9 MS. BARSTOW: Yes, Your Honor, I read them in
10 2020, and they've changed multiple times since then.

11 THE COURT: Did they ever change with respect to
12 each account holder that transfers crypto assets in an Earn
13 account transfers all right, title, and interest to Celsius?

14 MS. BARSTOW: That, Your Honor, I cannot say 100
15 percent. I do not remember everything that was written in
16 the original terms of use. That was over two years ago.

17 THE COURT: All right.

18 MS. BARSTOW: I'd have to see and --

19 THE COURT: Any last points you want to make?
20 What I'm going to do is I'm going to hear from Lucas
21 Holcomb, and then Douglas Saker and then I'm going to have
22 the Debtor respond to all three of those at the same time.
23 Okay? Anything else you want to add?

24 MS. BARSTOW: Yes, so essentially the process to
25 an allowed claim is a financing statement and a lien, and

1 control of that account, which I have satisfied both.

2 That's all I have to say, Your Honor. Thank you.

3 THE COURT: Okay. The Holcomb Motion is ECF
4 Docket 965. Does Mr. Holcomb wish to be heard?

5 MR. HOLCOMB: No, Your Honor.

6 THE COURT: All right. The Saker Motion is ECF
7 990. Douglas Saker, do you wish to be heard?

8 MR. SAKER: (indiscernible).

9 THE COURT: Mr. Saker, are you -- you made an
10 appearance today?

11 MR. SAKER: (indiscernible).

12 THE COURT: All right. Hearing no, let me hear
13 from the Debtor response with respect to the Barstow,
14 Holcomb, and Saker Motion.

15 MR. SCHEFFER: Ah -- Your Honor, Tommy Sheffer on
16 behalf of the Debtors, I'm going to ceded the podium to my
17 colleague in Chicago.

18 THE COURT: Just stop it. Someone other than the
19 Debtor's counsel wanted to be heard? No. Who is going to
20 address these motions?

21 MS. HENSLEY: Your Honor, Gabriela Hensley of
22 Kirkland and Ellis, on behalf of the Debtors and Debtor's in
23 Possession. Good afternoon.

24 THE COURT: Good afternoon.

25 MS. HENSLEY: Your Honor, the -- the arguments

1 raised today and the arguments in Ms. Barstow's supplemental
2 filing from late yesterday evening, generally put the cart
3 before the horse, in that the like perfection of a security
4 interest only is relevant and matters if there is a security
5 interest to perfect. Ms. Holcomb argued that state law on
6 this matter is preempted by the Constitution. That's
7 incorrect as a matter of law. Rally v Illinois, Department
8 of Revenue Code -- case site 530 US 15; states that
9 generally in the claims process, you look to the
10 requirements of state law to give the bounds of substantive
11 rights of a claim, and then those claims are treated under
12 the bankruptcy laws of the Federal Bankruptcy laws.

13 To this end, New York State law requires that a
14 secured party have a grant of a security interest. And none
15 of the claimants that filed motions on this issue could
16 point to any grant of a security interest in their favor
17 because none exists. Within the terms of use, the only
18 reference to the grant of a security interest is in Section
19 9, and that is customer is granting Celsius a security
20 interest. With respect to the point you made about, you
21 know, have the terms of use changed over time? They have
22 from the beginning, allowed the Debtors to hypothecate
23 assets transferred into the Earn program. Over time that
24 has been the precision of the language on that issue has
25 been expanded. I will note that with the sixth version of

1 the terms of use, which was implemented when the -- the
2 significant changes were implemented into the terms of use.
3 Users were specifically required to reauthorize and reaccept
4 the terms of use affirmatively.

5 THE COURT: (indiscernible). Let me just ask you
6 this question, Ms. Henley. If Ms. Barstow had deposited,
7 transferred, stable coin into (indiscernible) in 2020,
8 wouldn't the terms of use enforce, at the time, determine
9 what, if any, property interest the Debtors or Ms. Barstow
10 had? Could it -- could that be altered by a subsequent
11 change? She had multiple transactions over time, but would
12 terms of use entered, for example in April 2021; would that
13 effect what right, title or interest she may have had in
14 what she had deposited in 2020?

15 MS. HENSLEY: Your Honor, by their terms, the
16 terms of uses terms, the current version of the terms of
17 use, replaces all prior versions, and as noted with the
18 amendments.

19 THE COURT: You addressed that specifically in
20 your objection to these motions?

21 MS. HENSLEY: Your Honor, we did not in our
22 objection because the -- we viewed, and will happily
23 supplement our briefing, if you disagree, but we viewed the
24 issue of establishing the creditor as a secured claim. As
25 in in the first incidents as a prima facia matter, falling

1 on the creditor.

2 THE COURT: (indiscernible) three of these Motions
3 that I'm going with now were filed by pro se creditors. And
4 yes, I apply the rules with respect to pro se creditors, but
5 I also, and I believe the law appropriately recognizes that
6 the Court may take a broader look where I'm dealing the pro
7 se creditors, versus the Debtor that is represented by very
8 sophisticated counsel. And so we can talk about this after,
9 as I understand it, the Debtor and the Committee, and I
10 don't know who else was involved in this and read that there
11 ought to be a briefing schedule dealing with ownership of
12 crypto assets, et cetera.

13 What I'm going to do with respect to Barstow,
14 Holcomb, and Saker, ECF Document 950 for Barstow, ECF 965
15 for Holcomb, and ECF 990 for Saker. I want the Debtor's to
16 provide a written declaration -- a detailed transaction
17 history with each of these three creditors. So we undertook
18 ourselves. I say we, but the Clerks and I, to look at the
19 schedules and figure out what's been listed for these three
20 people and yes, I found entries for Holcomb, there are
21 actually three different line entries in eh schedules, all
22 four of -- all three of these people, Barstow, Holcomb, and
23 Saker had Earn accounts.

24 But I want to see with respect to stable coin, I
25 want what the transaction for each of these three account

1 holders has been. When assets were deposited and what were
2 they? I said crypto assets, like in stable coin, or some
3 other form of crypto assets. What were the terms of use
4 applicable at the time that the transaction -- each
5 transaction took place? And so I want to see this complete
6 picture for Barstow, Holcomb, and Saker. Yes, they
7 deposited stable coin on such and such date, terms of use
8 applicable at the time, provided that all right, title and
9 interest was transferred to the Debtor and what authority
10 the Debtor had to deal with it. And I also want to know the
11 transaction history includes withdrawals. Not just what
12 went in, but what came out. And in terms of anything they
13 withdrew, what form was it stable coin or not? I want to
14 see the complete transaction history. What I want to be
15 sure about it -- not only addressed to you, but to each of
16 your colleagues, and we'll talk about the scheduling of
17 briefing with respect to the broader ownership interests. I
18 want to be sure that I'm not deciding things when a motion
19 is raised by a pro se creditor, that may or may not be as
20 sophisticated, although I must say, you know, Ms. Barstow, I
21 think you did a very, very good job in putting your papers
22 together. But I want to be sure that everybody's playing on
23 a level playing field.

24 And to the extent that requires the Debtor to go
25 the extra mile in terms of what they'll submit to me, that's

1 what I'm going to require. I want to be sure that if I rule
2 in favor of creditors on this issue, I have considered all
3 of the relevant and arguments.

4 So what I would like you to do is, because I may
5 be imposing a more substantial burden on you on this. I
6 want you or your colleagues to confer with Ms. Barstow, Mr.
7 Holcomb, and Mr. Saker and agree on the schedule for you
8 submitting the additional information I've requested and to
9 give them an opportunity to respond. And after receiving
10 all of that, I will -- I'll see whether to schedule another
11 hearing or whether I'll decide it on the papers.

12 MS. HENSLEY: Understood, Your Honor. Just for --

13 THE COURT: That's how I wanted to see it with
14 respect to the Barstow, Holcomb, and Saker motions.

15 MS. HENSLEY: -- for clarification and not to
16 increase our workload, Mr. Sell filed several pleadings that
17 were in between Joinders and objections. Just so we don't
18 have to come back a third time, would you like us to include
19 Mr. Sell in those proceedings?

20 THE COURT: Yes.

21 MS. HENSLEY: And I just want -- want the record
22 to be clear.

23 THE COURT: Fair question. So Jack Sell filed a
24 motion to object. The official committee of unsecured
25 creditors and Kirkland Ellis were omitting security interest

1 perfection, and not consider stable coin holders as secured
2 creditors. That's filed as ECF Docket Number 1213. No, he
3 didn't file a motion. You're not, you know, it may be that
4 he's going to follow up with a separate motion, but I will
5 deal with the three who actually filed motions. Okay?

6 MS. HENSLEY: Understood, Your Honor. Thank you.
7 I will now cede the podium to my colleague, Mr. Koenig.

8 THE COURT: (indiscernible). Okay, Mr. Koenig, I
9 think if I'm correct, Item 11 on the agenda is Victor
10 Ubierna de las Heras motion for an order pursuant to
11 Bankruptcy Rule 2004, compelling production documents. It's
12 ECF Docket Number 1053 and the Debtor has filed an objection
13 and reservation of rights at ECF 1189 and Mr. Heras filed a
14 replay, which is at ECF docket number, 1290 -- go ahead.

15 MR. KOENIG: Your Honor --

16 MR. HERAS: Yes, Your Honor. Thank you.

17 MR. KOENIG: Oh, I'm sorry, go ahead. I was going
18 to just cede the lectern to Mr. Ubierna.

19 THE COURT: Okay.

20 MR. UBIERNA DE LAS HERAS: Okay. Thank you.
21 Well, first of all English is not my native language, so
22 excuse any mistake I may making in today's hearing
23 (indiscernible).

24 THE COURT: Let me ask you something. Stop it.
25 How do I address you? As Mr. Ubierna or Mr. Heras? I want

1 to be correct about it.

2 MR. UBIERNA DE LAS HERAS: Mr. Ubierna de las
3 Heras. In Spain we have two last names.

4 THE COURT: Okay. All right.

5 MR. UBIERNA DE LAS HERAS: Thank you.

6 THE COURT: Please go -- thank you.

7 MR. UBIERNA DE LAS HERAS: Thank you. Having you
8 read my application, the sort of suggestion on my replying
9 ought to be very brief today. I am a citizen of another
10 country that is not the US, so my knowledge of US Bankruptcy
11 is not -- is limited. However, when I first read Rule 2004,
12 it seems clear to me that there are no exception to Rule
13 2004. Just because the Board has a special committee or UCC
14 or an examiner exist on the case. If the legislature would
15 have wanted, they could have introduced resistance based on
16 the systems of the (indiscernible). However, they didn't.
17 Here (indiscernible) the right of parties in bankruptcy
18 proceedings. It is authority (indiscernible) on the grounds
19 of duplicate work, was granted to date. And almost no
20 bankruptcy case worth any 2004 examination be allowed. The
21 fact -- the fact that UCC has been appointed, that's another
22 brief (indiscernible) from requesting 2004 examination for
23 production of documents. And so, I am an international
24 customer, which didn't have access to custody accounts, and
25 I did not hold any Sell documents. Thus my interest may or

1 may not be the same as other creditors. I cannot be the
2 brief of my right to see the documents from the Debtors.
3 (indiscernible) if my request is granted, it will take time
4 from other matters, as most of these documents, how far away
5 the income buyers before they do not give any evidence as to
6 the (indiscernible) of regulation of time and
7 (indiscernible) also there has been (indiscernible)
8 creditors are going towards the claim from damages from the
9 proof of claims. So discovery's also necessary for this
10 creditor to pursue this thing through a proof of claim or a
11 post (indiscernible). That say, we need to (indiscernible)
12 that Celsius is not the interest (indiscernible) in an
13 ordinary basis. For example, Celsius has the latest or
14 hidden videos in YouTube. Based on what I have said in my
15 written motion and in my written reply to the
16 (indiscernible) my request should be granted. Thank you for
17 your time, Your Honor.

18 THE COURT: Thank you very much. All right. Let
19 me hear the Debtors response.

20 MR. KOENIG: Your Honor, for the record, Chris
21 Koenig, Kirkland and Ellis for the Debtors. Can you hear me
22 okay?

23 THE COURT: Yes, I can.

24 MR. KOENIG: Thank you. So, Your Honor, we filed
25 an objection at Docket Number 1189, and as we articulated in

1 the objection, our primary concern here is duplication of
2 efforts and straining the Debtor's limited resources to
3 respond to numerous diligence requests, which frankly have
4 been overwhelming in these cases. The Debtor's employees
5 are working tirelessly to respond to high priority diligence
6 requests from among other parties, the committee, the
7 examiner, the ad hoc groups in connection with the custody
8 and withhold briefing, among many others. And this was all
9 at the same time that the Debtors are running sale processes
10 for their mining business as well as another sale process
11 for their platform at large. And bidders continue to deluge
12 the businesses and provide revised diligence requests on a
13 regular basis. And of course, timely responding to bidders
14 diligence requests is key to insuring that bidders continue
15 to be interested and that will ultimately maximize the value
16 of these estates for all stakeholders.

17 As explained earlier in the hearing, the Debtors
18 are responding to all of these critical diligence requests
19 with a severely reduced workforce, which is working around
20 the clock to make sure that these key parties have access to
21 the information that they have requested. So the Debtors
22 are concerned about the overlap between these requests and
23 the investigations being conducted by the examiner and the
24 committee. And these requests are broad requests that move
25 in -- seeking, for example, movant has requested any record

1 of transactions after the pause was instituted, and all
2 documents regarding the functioning of internal transfers
3 for the accounting systems and how they are done off chain
4 within seconds. Our view is this would significantly
5 overlap with the examiners investigation. One of the topics
6 that the examiner is looking at is the Debtor's crypto
7 currency holdings including a determination as to where the
8 Debtor's crypto currency holdings were stored pre-petition
9 and are stored post-petition and whether different types of
10 accounts are co-mingled.

11 Separately, the movant is asking for documents
12 regarding insiders. The committee has repeatedly
13 articulated that that is a key focus of the committee and
14 its investigation.

15 Your Honor, the Court is supposed to balance the
16 competing interests of the parties weighing the relevance of
17 the necessity of the information sought by examination.
18 Your Honor, these requests are exceptionally broad, would be
19 very burdensome to the Debtors, particularly at this time in
20 light of the other high priority requests that are needed in
21 order to move these Chapter 11 cases forward, and it's also
22 notable that many of these topics are being investigated
23 already. The Court has broad discretion with respect to
24 Rule 2004 requests, again, we believe that these requests
25 are duplicative and should be either denied or at the very

1 least, adjourned until the examiners work is done and the
2 report is submitted; and after the bid process is complete
3 given the burden on the debtors in responding to those high
4 priority requests from the examiner and from the bidders
5 that are trying to maximize the value of these estates. And
6 if the Court is nonetheless inclined to grant the motion at
7 this time, as mentioned in our reservation of rights, we
8 would like to file responses and objections to the specific
9 requests. And if we're unable to come to an agreement about
10 the scope of the examination with the movant, following a
11 meet and confer, you know, we would raise this - we would
12 raise this topic with, Your Honor. Otherwise, I would rest
13 on the papers that we filed at Docket Number 1189, Your
14 Honor.

15 THE COURT: Okay. Mr. Ubierna de las Heras, is
16 there anything you want to say in reply?

17 MR. UBIERNA DE LAS HERAS: No, Your Honor.

18 THE COURT: All right. I'm going to take the
19 motion under submission and I'll enter an opinion or order,
20 hopefully within a day or two. Okay? All right. That
21 brings us, thank you Mr. Ubierna. That brings us to the
22 stable coin motion, the status conference with respect to
23 stable coin -- stable coin motion. The motion was
24 originally filed as ECF Docket Number 832. There were
25 numerous objections to the motion that were filed. I won't

1 catalog all of them, in ECF Docket Number 1228, the Debtor's
2 filed a statement regarding its motion in briefing. Who
3 wants to take this up for the Debtors?

4 MR. KOENIG: Your Honor, again, Chris Koenig from
5 Kirkland and Ellis for the Debtors. Your Honor, as you said
6 we would like to proceed as a status conference on the
7 stable coin motion. The objection deadline was October
8 25th. As you noted, numerous parties objected, even before
9 the objection deadline. Since the objection deadline, we've
10 been working with the objecting parties to try to narrow
11 issues, resolve issues. We've been having some success in
12 that regard but need some additional time to continue to
13 work with the parties. So we've agreed to adjourn the
14 motion to narrow the issues. Try to drive consensus and to
15 the extent we're unable to find consensus have Your Honor,
16 resolve any open objections. As you noted, we filed a
17 notice on Saturday morning while ECF was out, we continued
18 to discuss with the parties, through the weekend, to
19 determine how to proceed with the motion, slightly different
20 -- what we would like to do is slightly different than what
21 we filed in the notice on Saturday morning. I just wanted
22 to explain the Debtor's position this afternoon. What we
23 would like to do is to have the motion heard at the November
24 15th hearing. Many parties in their objections and
25 responses, including the committee, various state

1 regulators, the US Trustee, and others, have raised it as a
2 gating issue to selling assets to the Debtor's means have
3 demonstrate that they own the assets they're trying to sell.
4 Of course, we agree with that and have no problem putting on
5 our case in that regard. We've been clear from day one of
6 these cases that we believe that the earn coins are Celsius'
7 assets. It's clear and unambiguous throughout the terms of
8 use that the earn coins are Celsius' property and of course,
9 that's the entire -- that's the entire model of our business
10 that Celsius owns the earn coins. Can sell, stake or
11 otherwise, rehypothecate the coins in order to earn a return
12 on those assets and pay a portion of that return to their
13 customers. So in short, we would like to put on our case on
14 November 15th in regard to the stable coin motion. And what
15 we propose to do is to file one or more declarations a week
16 before the hearing. So that's, I believe November 8th,
17 setting forth our case in chief, and the facts in support of
18 the stable coins that we are seeking to sell, being property
19 of the estate, and we'll file a reply in support of the
20 motion with respect to any objections that are not resolved
21 between now and the hearing. And Your Honor, we expect that
22 we would have some sort of a short evidentiary presentation
23 on November 15th with respect to putting on our case in
24 chief on this important issue to demonstrate that the earn
25 coins belong to Celsius and can and should be sold pursuant

1 to the business judgement of the Debtors. And we would also
2 have revisions of the proposed order to reflect the
3 discussions that we've been having with various other
4 counterparties in order to try to drive consensus and
5 resolve objections.

6 THE COURT: You know, Mr. Koenig, I gathered from
7 your last three motions where pro se creditors were seeking
8 to have stable coin, (indiscernible) varieties of stable
9 coin compelling to be secured assets of those creditors.
10 One of the things that I don't mean to be critical of you
11 and your colleagues have an enormous amount of things on
12 your plate, but I mean, I expressed my frustration that, you
13 know, people (indiscernible) earned account holders were
14 depositing and withdrawing assets at various times, there
15 were various iterations of terms of use in effect from time
16 to time. The subsequent terms of use replace -- in effect
17 replace earlier terms of use as to transactions that
18 occurred before the new terms of use. Those were all issues
19 that I was focused on. Who are the counterparties to what
20 you're proposing that we hear on November 15th? Who am I
21 going --

22 MR. KOENIG: (indiscernible), I'm sorry, Your
23 Honor, you cut out there for a moment.

24 THE COURT: Besides the Debtor's, I mean, who have
25 you been negotiating with?

1 MR. KOENIG: The objecting parties. I mean, a
2 variety of individuals and other parties have, you know,
3 filed formal and informal responses to the motion and have
4 raised these issues throughout these cases. And so we've
5 been -- we've been discussing with folks both that have
6 filed pleadings on the docket and those that have reached
7 out to us informally.

8 THE COURT: But are any of them represented by
9 counsel?

10 MR. KOENIG: Yes, Your Honor. Ms. Kooskia has
11 raised her hand, and she's one of the individuals that did
12 not file a response, but that we've been working with on a
13 more informal basis.

14 THE COURT: Any other counsel that you've been
15 working with?

16 MR. KOENIG: Certainly, I mean, the committee, as
17 you know, Your Honor, filed an objection and we've been
18 working with them both before the objection was filed and
19 after as well.

20 THE COURT: (indiscernible) you decide that the
21 piece of paper that the committee has filed is kind of
22 strange for a committee to file, but in any event, yes, I
23 noted that.

24 MR. KOENIG: Yeah, and then, of course there's
25 other parties in the case as well. The other ad hoc group

1 and the US Trustee, among others. And we've been working
2 with the state regulators as well. We've been having calls
3 with them over the last week to week and a half to address
4 the issues that were raised in their objections.

5 THE COURT: I have my concern; it is whether
6 there'll be a full record -- timely record for the Court to
7 go ahead on November 15th and address an important issue.
8 This is a very important issue in the case. What's the
9 schedule? Did you negotiate a schedule, for example with
10 Ms. Kovsky or with any of the other counsel as to who would
11 file what?

12 MR. KOENIG: No, Your Honor, that's the Debtor's
13 proposal as far as what we would -- how we would like to
14 proceed. We're happy to negotiate a briefing schedule and
15 submit it to Your Honor, if you'd like to proceed either at
16 the November 15th hearing or at the following Omnibus
17 hearing on December the 5th. That seems like that's where,
18 Your Honor, is going with this anyways.

19 THE COURT: Look, I understand the importance of
20 the issue. I agree it should be resolved sooner rather than
21 later. But I don't want to do what's been happening, I get
22 these untimely you know replies and things like that. I
23 prepare for hearings. And I want to be sure that the Court,
24 that I know what the schedule is. There's sufficient time
25 after the last reply is filed for the Court to be sure that

1 it's prepared. We can go on, I don't know, how -- are you
2 talking about why witnesses?

3 MR. KOENIG: Your Honor, what we would do is we
4 would -- we would file one or more declarations in advance
5 of the hearing and then depending on how objecting parties
6 would like to proceed, whether they would like to cross
7 examine the witnesses that provided the declarations, you
8 know, their direct testimony, we expect, would be by their
9 deposition -- or sorry, by their declarations, and then to
10 the extent other parties wish to ask questions, you know,
11 they would certainly be free to do so at that hearing.

12 THE COURT: Let me call on Ms. Kovsky. I see her
13 hand raised and she's one of the people that you've
14 indicated you've had discussions with. Ms. Kovsky?

15 MS. KOVSKY: Thank you, Your Honor. Deb Kovsky,
16 Troutman Pepper for the Withhold Group. Are you able to
17 hear me?

18 THE COURT: Go ahead.

19 MS. KOVSKY: So the Withhold Group's issues are a
20 little bit tangential to those of the earned rewards
21 customers, at least with respect to this motion, since the
22 Debtors did expressly indicate in their motion that they are
23 not seeking to sell or otherwise dispose of any stable coins
24 that may belong to the custody or withhold account holders.
25 The concern that we had raised informally was how can you be

1 sure? How -- what's the mechanism to make sure that you're
2 not inadvertently selling coins that may not be property of
3 the estate? We were able to get comfortable based on
4 information and some proposed modifications to the order
5 that the Debtor had discussed with us and that we anticipate
6 would be part of whatever the order is, going forward,
7 that's ultimately entered. I understand there may still be
8 ongoing discussions, things are still fluid, so I just
9 wanted to put a reservation of rights on the record, that if
10 something does change, we may need to raise our hand and
11 speak up in a more formal way, but we have been discussing
12 with the Debtors and certainly will abide by any further
13 briefing schedule that, Your Honor, puts in place.

14 THE COURT: All right. Mr. Colodny, you're here
15 on behalf of the committee, is that correct?

16 MR. COLODNY: That's right, Your Honor. Can you
17 hear me?

18 THE COURT: Oh yeah.

19 MR. COLODNY: I have double muted before. Your
20 Honor, I think our paper was meant to make the point that
21 the Debtors have to prove their ownership to sell the
22 assets. I think that doing that in a way, on a schedule
23 that makes sense is appropriate. And I'm not sure that
24 filing declarations seven days before a hearing and then
25 arriving at the court for people to cross-examine the

1 witnesses on the stand is necessarily the best way to do
2 that. I think setting forth a reasoned, but accelerated
3 time table, where we all have deadlines and we know what
4 targets to hit makes sense here. But I'm not sure that can
5 happen in seven days before a hearing.

6 THE COURT: I'm not sure it can either, but I
7 don't -- part of my concern is, no disrespect whatsoever
8 intended for the pro se creditors who filed motions, the
9 things they care about intensely, and I understand that.
10 But this is -- these are important issues and I want it to
11 be a fair fight. Ms. Milligan, let me hear from you.

12 MS. MILLIGAN: Thank you, Your Honor. Lala
13 Milligan with the Texas Attorney General's office on behalf
14 of the State of Texas Regulatory Entities. I share Mr.
15 Colodny's concerns with the timing. My -- we have been in
16 discussions with the Debtor and provided some information as
17 recently, I think, as last night about coins that they're
18 proposing to sell. The concern that I have is similar to
19 Mr. Colodny's in that our understanding that a briefing
20 schedule was being contemplated. Further information was to
21 be provided. The Debtors were to supplement their pleadings
22 so that we could be clear what was being sold, how much was
23 being sold. So that everyone had more information about
24 what is actually happening. The concern that I have, just
25 hearing the Debtor's plan, now for the first time is, we're

1 going to get a series of declarations that everyone, not
2 just the committee and the US Trustee, but the regulator
3 body has to vet on a very short timeframe. Understanding
4 that this case needs to move forward and the Debtor may need
5 to access funds. We understand the pressure of this case,
6 but I share the committee's concerns that having a series of
7 declarations and minimal information walking into a hearing
8 on November 15th, that is getting longer by the moment
9 today, is a concern. So we share that concern, and we also
10 understand the pressure to move with all deliberate speed.

11 THE COURT: Does the US Trustee want to be heard
12 on this? Ms. Cornell, are you still present at the hearing?
13 Is anybody from the US Trustee Office, still present at the
14 hearing?

15 CLERK: Yes, Ms. Cornell is on and it looks like
16 Mr. Bruh was on the line. I don't know if they walked away
17 or something.

18 THE COURT: This is their opportunity. I want to
19 give someone from the US Trustee's office an opportunity to
20 speak. I just say, you know, I understand it's four minutes
21 to two, but I haven't walked away from the bench.

22 MR. BRUH: Your Honor, Mark Bruh of the United
23 States Trustee. I am here. We do have a pending motion,
24 excuse me, objection to the motion and we would like the
25 opportunity to discuss things with the Debtor. We haven't

1 really had a open line of communication regarding the stable
2 coin issue, most recently, as there have been other matters
3 that have been the focus of this cases at this time.

4 THE COURT: Okay. Are there any other -- I'll
5 give the pro se's hands I see raised an opportunity in a
6 minute, but are there any other counsel who are appearing
7 today who want to be heard with respect to procedures for
8 determining ownership of stable coin?

9 MR. KOENIG: Your Honor, just really quickly, it
10 sounds like December 5th, just to be clear from the Debtor's
11 perspective, we're happy to proceed on December 5th and to
12 negotiate with the other parties a reasonable schedule in
13 advance to make sure that all parties have an opportunity to
14 review the materials that the Debtors submit and respond in
15 a meaningful way. Certainly these are important issues, but
16 it is not necessary from a liquidity perspective for
17 November 15th to December 5th, so I just wanted, Your Honor,
18 to have that benefit that from the Debtor's perspective, we
19 would be happy to proceed on December 5th, if that's the way
20 that, Your Honor would like to proceed.

21 THE COURT: At this stage, Mr. Koenig, I'm not
22 expressing a preference for one date or another. What I am
23 trying to make clear is that I want the parties in interest
24 to have an opportunity to prepare, to know what evidence is
25 being offered. To have an opportunity -- I don't want a

1 free for all in the courtroom. Then this hearing is going
2 to take place. It'll be a hybrid hearing. It will include
3 anyone who wishes to appear in my courtroom, but we'll also
4 have the opportunity to appear on zoom.

5 MR. KOENIG: Certainly, Your Honor, and as I
6 mentioned, we're happy to insure that our papers and or
7 declarations in support are filed enough in advance to give
8 parties in interest time to respond and to file -- to file
9 papers on the docket so that, Your Honor, has the benefit of
10 reading those before the hearing.

11 THE COURT: Yeah, I don't know how many witnesses,
12 who wishes to cross-examine, what is the length of the
13 hearing that's anticipated? So for December 5th, Celsius is
14 on the calendar at 2:00. I have a disclosure statement
15 hearing in another matter, unless it's changed, scheduled
16 for 9 a.m. that day. Dianna are you able to tell me whether
17 there's been any change in the date of the All Year
18 Holdings, December 5th and December 6th hearings?

19 CLERK: Hi, Judge. I reached out to counsel this
20 morning. I'm just waiting to hear back. They haven't
21 gotten back to me.

22 THE COURT: Mr. Koenig, what I would like to do is
23 give you and your colleagues a chance to confer with other
24 parties at interest on this stable coin issue. And it
25 really, whether you can sell it depends on is it yours?

1 When I say yours, obviously, the Debtor's and --

2 MR. KOENIG: Right.

3 THE COURT: That's an issue that came up in the
4 motions today that I've put off.

5 CLERK: Judge?

6 THE COURT: Yeah, Dianna?

7 CLERK: My apologize. Mr. McAnuff just emailed
8 back. He said they're fine with giving up the December 5th
9 and 6th hearing dates. This is for another matter they were
10 looking to schedule in a Linda Star, but would you like me
11 to have them move both dates or --

12 THE COURT: We'll talk about that after this.

13 CLERK: Okay. Thank you.

14 THE COURT: Let me give other people a chance to
15 speak. Mr. Herman, go ahead.

16 MR. HERMAN: Thank you, Your Honor. Emanuel
17 Herman, pro se creditor. So I filed a response and
18 reservation of rights yesterday, which I encourage the
19 parties to read, and I'm sure some of the parties have read.
20 Like to be clear, I expect to be a party that's negotiated
21 with here. Also we need time for customers --

22 THE COURT: Mr. Herman --

23 MR. HERMAN: Yes, Your Honor?

24 THE COURT: Do you have stable coin?

25 MR. HERMAN: I have some, yes, I do. But I can

1 also speak to stable coins in general. Sorry, go ahead,
2 Your Honor.

3 THE COURT: Unless you have stable coin in a
4 Celsius account, I don't want to hear from you on this.

5 MR. HERMAN: Oh, I do, Your Honor, yes, I have
6 some stable coins. It's not primarily what I have, but I
7 have some. I think about a ten percent of my account. So I
8 will also just not that we can sell stable coins without
9 ruling on whose property they are and that the UCC proposed
10 a path forward on that.

11 THE COURT: But we're not going to do that. I'm
12 going to determine whose it is.

13 MR. HERMAN: Okay. So, yeah, I mean, I guess I
14 would just say I guess I feel that, you know, I feel that
15 this is a rushed process. That you know, we've been in
16 litigation on a microcosm or a microcosm with small slivers
17 of custody and withhold, and I'm not sure why there's
18 expected to be a resolution of earns property rights in a
19 single day.

20 THE COURT: Earns property rights -- it is well,
21 it is with respect to stable coin. Okay.

22 MR. HERMAN: Got it. I mean, I urge the Debtor to
23 consent to mediation and begin discussions with creditors.

24 THE COURT: I understand you're suggesting it can
25 be put off. It's happening. Okay.

1 MR. HERMAN: Okay.

2 THE COURT: (indiscernible) schedule, but it's
3 happening. Mr. Cruz?

4 MR. CRUZ: Thank you, Your Honor, Cam Cruz, pro se
5 creditor. I have about \$27,000 worth of finance USD, which
6 is different from the GUSD and USDC, but similar in nature.
7 I do want Kirkland Ellis to address the matter of voyager
8 being a customer of Celsius --

9 THE COURT: Yes, I (indiscernible) this issue Mr.
10 Cruz.

11 MR. CRUZ: Okay. Well, --

12 THE COURT: This is going to be a hearing focused
13 on stable coin. Who owns it.

14 MR. CRUZ: Yep. Well it's relevant in the sense
15 that they withdrew \$100 million of USDC stable coins on
16 March 9th and other assets were moved into withheld status.
17 They have about \$1 million worth of withheld on platform.

18 THE COURT: I'm sure that, you know, it may be
19 that Voyager issues will be dealt with at an appropriate
20 time. It's not going to be this time. Okay. There are
21 enough account holders, it may be there are avoidance
22 claims, I don't know. I'm not speaking to that at all.
23 There are enough account holders who have stable coin of one
24 form or another, in their earned accounts, and it may be
25 that with respect to custody account and withheld accounts,

1 there also may be issues of stable coin. But that's what
2 I'm focused on is dealing with -- there've been enough
3 parties in interest who have raised issues about stable
4 coin, do they have secured claims? Do they don't have
5 secure claims? Who owns it? Et cetera. That's what we're
6 going to deal with now.

7 MR. CRUZ: Um-hum.

8 THE COURT: Mr. Bronge, do you

9 MR. BRONGE: Yes, Your Honor, this is Johan
10 Bronge, pro se creditor and I do have in importer account,
11 earn account. I have sell tokens and stable coins and all
12 kinds of assets on the platform. Now, the way I see this,
13 the issue of ownership status of all the kinds of different
14 assets are in question and has been in question since the
15 start, and I wonder why the Court cannot take the holistic
16 approach in this and rule on all assets, property, and title
17 rights in one go, to clear up these issues? Because it just
18 seems to drag on and details with one issue after the other
19 without actually conclude the full thing. And I would also
20 think that ruling on all assets status would enable bids and
21 clarity for the sale process to go forward a bit easier.

22 THE COURT: Thank you. Ms. Cordry?

23 MS. CORDRY: Yes, Your Honor. We did not
24 specifically file anything with respect to stable coin. We
25 did make a notation with respect to the general sales motion

1 that this whole question of what did the Debtor own, was a
2 major issue out there. And I think a lot of the concerns
3 cut across both of the -- all portions of the Debtor's
4 assets, whatever they may be. So I would agree that I think
5 -- it's time to T this up and I think it obviously needs to
6 be done in an expeditious fashion. That said, I think
7 November 15th would be a very aggressive, to say the least,
8 timetable. I think the December 5th date might be a very
9 reasonable date and would tie in well with some of the other
10 things going on in the case. That kind of a time period
11 anyway, but yes, I think we would agree that it's time to
12 really sit down there and deal with this motion that has
13 been floating around and these concerns since the beginning
14 of the case. Thank you.

15 THE COURT: Thank you, Ms. Cordry. Mr. Koenig,
16 should all -- ownership of all of the assets be dealt with
17 together? All of these crypto assets be dealt with at the
18 same time?

19 MR. KOENIG: Your Honor, Chris Koenig for the
20 Debtor, so we've already been -- we have a separate briefing
21 schedule on custody and withhold. Those dates have been out
22 there for a while. Our opening briefs on those are due this
23 Saturday. So, you know, while we certainly would like to
24 proceed with earn, we already have separate proceedings
25 pending for custody and withhold and those are proceeding as

1 planned, as I said the opening briefs are due on Saturday.
2 So our view is that we should proceed with earn at this
3 time, at December 5th, around December 5th, and perhaps what
4 makes sense is for the Debtors to file their supplemental
5 papers and declarations 21 days before that hearing. I
6 think that that's November 11th, I have to check a calendar
7 and then we can just have a normal motion schedule where
8 folks can file objections seven days before the hearing and
9 the Debtor can file a reply in advance of the hearing in
10 connection with the case management motion. That would be -
11 - I think that that works with the calendar and would give
12 parties an appropriate amount of time to review the
13 submission in advance of the hearing, but happy to do
14 whatever, Your Honor, proposes instead.

15 THE COURT: As I understand, you have -- that
16 would apply as to all earn accounts, whatever, whether
17 stable coin or not stable coin?

18 MR. KOENIG: That's right, Your Honor, we're happy
19 to do that, because that, of course, whether stable coin's
20 in an earn account belong to the Debtor, it's part of the
21 broader question of whether every coin in the earn account
22 belongs to the Debtor. And so we can address both of those
23 at the same time, so we don't have to litigate that same
24 issue twice.

25 THE COURT: Okay. I agree. All right. But what

1 you need to do -- what you're proposing sounds reasonable
2 and appropriate for me. I've got to tell you; my December
3 calendar is a mess. But we could go forward on -- it
4 certainly sounds to me that we could go forward on December
5 5th and 6th. I want to make crystal clear that this
6 scheduling order has to put in all bold that no supplemental
7 filings will be permitted after the date for the Debtor's
8 reply. I don't want this situation -- this is not you,
9 okay. But you know, it's becoming the pattern that I get
10 these last minute supplemental filings, and that's -- they
11 won't be considered. It's -- I want to make it clear as
12 day. If you've got something you're going to put in your
13 objection or the Debtor in its reply, it better be there,
14 otherwise it won't be considered. Okay?

15 MR. KOENIG: Understood, Your Honor. We'll submit
16 a form of scheduling order on the docket and we'll also send
17 a word version to your chambers, if that works.

18 THE COURT: Well, what you need to do before you
19 submit it to chambers is confer with Ms. Kovsky, and other
20 counsel. You know, I -- the State regulators to the extent
21 this is an issue that they raised, I'm -- I've expressed my
22 concern. I think, you know, I very much respect the motions
23 and the arguments that have been made by the pro se
24 creditors, but in as plain and as simple terms as possible,
25 I want this to be a fair fight. And it may be they're very

1 knowledgeable about the facts and no so much about the law.

2 Again, I want it to be a fair fight, and I'll --

3 MR. KOENIG: Understood, Your Honor.

4 THE COURT: The Court will work to get those
5 issues resolved expeditiously, consistent with the -- a very
6 busy calendar right now. Okay.

7 MR. KOENIG: Understood, Your Honor. And of
8 course we'll confer with the other represented parties
9 before submitting any schedule to chambers or posting it on
10 the docket.

11 THE COURT: All right. I think that takes us
12 through the agenda. I know -- when have you -- the Bargate
13 Motion is listed as an adjourned matter. When is that going
14 to be on?

15 MR. KOENIG: Your Honor, that will be heard on
16 November 15th, the preferred equity holders have filed a
17 motion pursuant to bankruptcy 1009 and requested that those
18 matters be heard at the same time. We thought that that
19 made sense, so those matters are up -- related matters are
20 up on November 15th and we would expect that the Bargate
21 motion would be considered at that time.

22 THE COURT: Okay. And just to be clear, with
23 respect to the evidentiary hearing regarding ownership in
24 earn accounts, it will a hybrid hearing. I expect the all
25 parties interested are important, but the principle parties

1 in interest and counsel should be present in my courtroom
2 for that hearing. And there will be zoom access provided
3 and I may well listen to objections or arguments made by
4 other counsel, but I expect the main counsel to be. All
5 right. Just bear with me one more second. All right. I
6 know there were some additional hands raised, but I'm not
7 going to recognize anybody else at this point. It is 13
8 minutes after two, we've been at it since 11:00, and I'm
9 certainly tired, let me put it that way. So we are
10 adjourned.

11 MR. KOENIG: Thank you, Your Honor.

12 (Whereupon these proceedings were concluded at
13 2:13 p.m.)
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

RULINGS

	Page	Line
KERP sealing motion is denied	29	17
KERP motion is denied	29	25
Securities Stipulation is approved	73	16
ECF 1013 and ECF 1112 are granted	80	13
ECF 962 and ECF 1070 are granted	82	14

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: November 3, 2022